

Ernst

Haiti, 17 years old

When Ernst arrived in the United States from Haiti on December 20, 2001 at Miami International Airport, he was shocked to be apprehended by INS. His two little sisters were born in the U.S. and his mother lived in Miami and had been a Lawful Permanent Resident (LPR) in the United States since 1988. He didn't understand his immigration status, but he did know his mother had filed an application with INS for him several years ago. In fact, his mother had filed a family visa petition on Ernst's behalf, which INS approved in 1995.

Ernst was placed in detention at Boystown. His initial request to be released to his LPR mother was denied. In mid-January 2002, an INS Deportation Officer indicated to Ernst's mother that her son would be released to her, so she went to Boystown to pick him up. Upon arrival there, she learned that INS had taken Ernst away in handcuffs and shackles, put him on a plane and transferred him 1200 miles away to a facility in Berks County, Pennsylvania. Armed security personnel escorted him on the plane. Ernst's mother did not initially know where INS had taken her son.

INS officials claimed that Ernst was exhibiting behavioral problems while at Boystown. He was therefore placed in the secure facility at Berks, where he was commingled with American juvenile delinquents, subjected to regular strip searches and extremely harsh conditions. In a letter to FIAC, Ernst described the Berks facility as "the Valley of Death" and wrote, "I want you to understand how am my doing this place make me dreams badly this place is horrible terrible and sadness place you just don't know how am I running out of hopey I can't take this no more [sic]... please help me."⁵³

In his own words:

"Secure is a terrible place. It's a place for criminals—for real. No immigrant should be in there. I wish nobody to go there. They humiliate you every minute, every day... In Secure you can't talk, you can't turn your head. You do anything they didn't tell you to do and they restrain you. That means they throw you down on the floor and hold you there. Or they make you do push-ups. You look the wrong way, you look out of your pod, you do anything and they pull your shirt and scream in your face. They strip-searched us almost every day. It's gross. They do it all the time: after visits, if they think somebody took something, whenever they want. You got to bend over and cough and they make you spread your cheeks (buttocks). It's humiliating... I had to go to the dentist one time. They took me there in shackles with handcuffs that were connected to a chain around my waist. I had to see the dentist with the handcuffs on, just sitting in that chair with those handcuffs..."

-Statement of Ernst to FIAC, June 12, 2002

Although Ernst was eventually moved from the Secure facility, where he was considered a model resident and worked as a trustee, to the "Shelter" facility at Berks, he continued to lament about the conditions of his detention. He described conditions as particularly harsh for the Haitian children at the facility because of language barriers and their treatment by staff.

Although Ernst was detained in Pennsylvania, venue in his immigration case remained in South Florida where his FIAC attorney and family were. When Ernst had his scheduled asylum hearing in Miami in

⁵³ Letters from Ernst, March 10, 2002 and March 4, 2002

early June 2002, he was transported in handcuffs back to Florida. Although his hearing was rescheduled after he was transferred, problems with his detention placement continued. Even though in Pennsylvania Ernst had no further incidents in INS custody and had been moved to a "Shelter" facility, which has the same security classification as Boystown, he was not brought back to Boystown. He was instead placed in a Miami hotel room where he, like all the other children detained there, had no access to recreation or education. He only left his room to go to attorney visitation at Krome (FIAC does not have access to the hotel itself) or court. Ernst begged FIAC staff to help him remain in Florida, saying that he preferred the isolation of the hotel room in Miami to the treatment he received where he was detained in Pennsylvania. Ernst remained at the hotel while his lawyers prepared for his hearing.

A *pro bono* attorney at the law firm of Shook, Hardy and Bacon generously agreed to work to obtain Ernst's release. The attorney asked INS to reconsider releasing Ernst to his LPR mother. Ernst also had LPR aunts and uncles in Miami willing to sponsor him.

Ernst was finally released to his mother the day of his asylum hearing. His release came six months after his arrival in the United States, during the first week of July 2002. Although Ernst is now pursuing both asylum and Lawful Permanent Residency in the United States, he says he continues to have nightmares and still feels humiliated about the way he was treated while in INS custody.

Emmanuel, Patrick and Frantz

Haiti, 15, 16 and 17 years old

On December 3, 2001, the U.S. Coast Guard rescued 167 Haitians whose boat nearly capsized off the coast of Florida.⁵⁴ On the boat were 14 children, including Emmanuel, Patrick and Frantz. Shortly after the boat arrived, INS officials in Washington issued a directive to Miami INS officials not to release these Haitians who passed their credible fear interviews from detention without approval from headquarters.⁵⁵ While unaccompanied children aboard the December 3rd boat were exempted from this policy because they were not placed in the expedited removal process, these three children were taken to Boystown.⁵⁶

Boystown has a number of Creole speaking staff and most Haitian children are released to family or foster care expeditiously.⁵⁷ However, Emmanuel, Patrick and Frantz remained in detention.

Early one morning in January 2002, they were woken and told to gather their things. At first they thought maybe they had to go to court, but when Boystown staff erased their names from the board containing all the children's names, they became afraid they were about to be deported. The boys were handcuffed and taken to the Krome detention facility, where they were processed, and then put on a plane to Pennsylvania. On the morning of their transfer they were told, for the first time, that they were "not respectful" at Boystown. They were not told what they had done wrong. A Boystown staff person subsequently told FIAC that a number of the Haitian children aboard the December 3rd boat had been particularly "bad" and had tried to put voodoo spells on the staff.

Use of Restraints and Strip-Searches of Children by INS

Each time FIAC conducts a "Know Your Rights" presentation for children at Boystown, at least one or two of the children in attendance seem to have a horror story to share regarding their treatment in the United States. They recall being handcuffed and shackled, missing meals, being held with adults, or treated with shocking disrespect by INS officials. For example, a 16-year-old Argentinean girl, Maria, recalls being apprehended while at home, handcuffed along with her family and held in a small room in a Miami INS office for more than ten hours. During that time, neither she nor her family were given any food and were only allowed to use the restroom once. Maria was later separated from her family and placed at Boystown. Her older sister was held at a local county jail and her father and brother at the Krome detention facility.

Similarly, when cousins Elena and Anita (17 and 4 years old) arrived at the Miami International Airport in early 2002, Elena was taken into a small room where she was made to take off all her clothes and strip-searched. A woman interrogating Elena about how and why she came to the United States told her not to bother getting an attorney because she wouldn't need one. Elena, who cried throughout the interview, said the woman did not believe anything she said even though she was being truthful. The woman told Elena, "You may be stupid, but I'm not," and said that Elena could look forward to a long time in prison because she was "no one" and had "no reason" to try to come to the U.S. illegally.

One 14-year-old Guatemalan boy wept throughout one of FIAC's Rights presentations. He later told a FIAC attorney that he had been held at a hotel for ten days, where he described armed guards who stood outside his door and made fun of him.

⁵⁴ The boat that ran aground off the Miami coast originally had 187 Haitians on board. Twenty of the Haitians jumped overboard, 18 of them swimming to shore. Two reportedly drowned. Since the 18 made it to shore on their own accord, they were not placed in expedited removal and were released from detention. Although released, none were paroled, and so they could not apply for work permits. The remaining 167 Haitians were rescued by the US Coast Guard and placed in INS custody upon arrival in Miami. Most remain in detention or have been deported.

⁵⁵ The INS policy denying release to Haitian asylum seekers is not applied to asylum seekers of any other nationality and is a reversal of the Miami INS District's policy that generally favored the release of such persons. A class action lawsuit filed on behalf of the Haitians was dismissed when the Federal Court Judge determined that the Haitians' "cry for freedom needs to be directed to those representatives of the political branches responsible for enacting immigration laws and policies." An appeal is pending with the Eleventh Circuit Court of Appeals. On October 1, 2002, the U.S. Senate Immigration Subcommittee held a hearing regarding the discriminatory treatment of the Haitians, who remain in detention more than ten months after their arrival in the United States.

⁵⁶ Children on the December 3rd boat who were accompanied by a parent, and were therefore included in their parent's asylum application, were subject to this discriminatory policy. Two such children remain in detention in Pennsylvania. One, who is in Pennsylvania with his mother, is separated from his father who is detained at Krome in Miami.

⁵⁷ See footnote 20.

The INS Chief of Staff told Haitian community leaders, following the boys' transfer to Pennsylvania, that the boys had inappropriately interacted with some of the girls at Boystown, an unsubstantiated accusation that the boys denied and were never told of until FIAC asked them about it.

In Pennsylvania, they became increasingly depressed and felt hopelessly isolated and cut off from their community and attorneys. Unlike Boystown, the Berks facility has no Creole-speaking staff and did not use a Creole interpreter to communicate with the boys, causing frequent misunderstandings. Other non-profit agencies in Pennsylvania use a volunteer Creole interpreter from New York City, a three and a half hour drive away.

Following their transfer, the boys began calling FIAC frequently, begging to be released or transferred back to South Florida. Emmanuel in particular was crying himself to sleep every night. The boys claimed to be treated harshly by staff and said sometimes when other children were taken on outings they were not allowed to go and were not told why. Although FIAC was eventually able to obtain *pro bono* representation for the boys in Pennsylvania, they continued to call FIAC repeatedly to express their frustration and isolation.

INS staff in Pennsylvania were unfamiliar with the foster care program available for unaccompanied Haitian children, even though it is national policy and was mandated by the U.S. Congress, so the release process for Emmanuel, Patrick and Frantz became painfully prolonged. Their lengthy detention aggravated their sense of isolation and hopelessness.

In August 2002, following repeated release requests and explanations of the foster care program the boys' were eligible to participate in, Emmanuel and Patrick were finally released. Frantz remains in detention because he has been unable to secure a birth certificate that the INS can authenticate.⁵⁸

⁵⁸ According to the U.N. Children's Fund (UNICEF), more than 50 million children worldwide lack such documentation. Deen, Thalif. "50 Million Children Lack Birth Certificates, Says UNICEF," *Inter Press Service*, June 4, 2002.

Leonie

Jamaica, 16 years old

Leonie's hands shook as she passed a crumbled paper through the attorney visitation slot to a FIAC paralegal. She looked through the Plexiglas divider in the Krome attorney visitation room and said very softly, "I'm really scared. I don't want them to deport me, please help me,"⁵⁹ before she covered her face with her hands and began to sob. The piece of paper, which gave her notice of the date and place of her first immigration court hearing, was the only information she had about her immigration proceedings. Leonie said that within a few days of her placement at Boystown, she had been taken to a dentist. She was not told why she was having a dental exam until it was over. The dentist told her she was 18, and Leonie was transferred to the local hotel room where she had virtually no access to the outside world. Because FIAC does not have access to names of detainees held at the hotel, Leonie's circumstances were unknown for nearly a month.⁶⁰ No one had spoken to Leonie about her situation until FIAC visited her.

Like all INS detainees at the hotel, Leonie could not go outside. In fact, the only time she could breathe fresh air was when she was being transported to Krome for an attorney visit or court. She had no activities, no recreation, no school. For nearly three months while she was at the hotel, Leonie only had the same underwear she was transferred there in, despite repeated requests by herself and FIAC that her property be transferred to her at the hotel.

INS questioned Leonie's statement that she was sixteen years old, as well as the statements regarding her guardian, with whom she had lived for the past three years and who had registered her for school in New York, where she had been in the 10th grade. INS did not allow Leonie to be returned to Boystown until FIAC obtained her birth certificate and it was authenticated.

Back at Boystown, Leonie's entire demeanor changed. She smiled and laughed a lot, and said how grateful she is to have been taken out of the hotel. However, she told FIAC that at Boystown, "They open and read our letters and [another detained girl] got in trouble for what she wrote. When I found that out, well, I never felt like I was in jail here [at Boystown] before but now I do."⁶¹

Leonie's biological mother in Jamaica severely mistreated her, physically and emotionally. Any money her father sent to her in Jamaica went instead to her mother's many vices. When Leonie's father learned of the abuse, he brought her to live with him and his partner and their daughter in New York. Leonie's reunification with her father was what she calls the "happiest time of [her] life," until he died of leukemia in November 2001 and her house burned down later the same month. She struggled a great deal with the loss of her father, and in May 2002, the INS in Florida apprehended her and a friend.

Leonie didn't know anything about her immigration status until INS apprehended her. For months, FIAC advocated for Leonie's release to her guardian in New York, who has been a Lawful Permanent Resident for over 25 years and is the only real mother Leonie has ever known. Recently, the Office of Juvenile Affairs (OJA) has become the decision-maker on all children's release requests, as opposed to the local INS. In Leonie's case, the local INS faxed a one-page summary of her case, which recommended that her release request be denied because of the lack of "blood relationship." Upon learning of this, FIAC contacted the interim director of the OJA and sent her all the supporting documents for Leonie's release, which were not included in the local INS' one-page summary. After careful review, the OJA overturned local INS' recommendation and Leonie was finally released to her guardian in New York on October 24, 2002, after more than five months in detention.

⁵⁹ Statement by Leonie to FIAC, June 7, 2002.

⁶⁰ FIAC has raised its concerns about treatment of INS detainees at the hotel and the serious lack of attorney access there in a letter to Officer-in-Charge, Wesley Lee, on May 30, 2002. To date, FIAC has not received a response.

⁶¹ Statement by Leonie to FIAC, August 21, 2002.

Conclusion and Recommendations

"It seems like they got the laws all messed up here. I mean, they spend all this time on kids but it's the adults that seem to be causing the problems in this country... I think they ought to spend more time going after the big people."

~ Leonie, August 21, 2002

As the treatment of the individual children profiled in this report demonstrate, it is impossible for a single agency—the INS—to manage its equally important, but conflicting, roles as enforcement officer and caretaker of these vulnerable children in its custody. The American Bar Association, American Civil Liberties Union, Amnesty International, the Lawyer's Committee for Human Rights, the Women's Commission for Refugee Women and Children as well as countless other local, national and international groups, including FIAC, have all called for a serious overhaul in the way INS treats children in its custody. National advocacy efforts have gained momentum in the past year with the introduction of legislation that would significantly reform the manner in which children in INS custody are treated.

INS' response to this legislation was to announce an internal restructuring and to create an Office of Juvenile Affairs (OJA) *within* the agency. As the children profiled in this report demonstrate, however, creation of this office has not changed the treatment of detained immigrant and refugee children and fails to address the inherent conflict of interest the INS faces as both captor and caregiver of children in its custody. Local INS officials continue to supervise the daily care and services provided to the children and continue to make their own recommendations to the OJA regarding important decisions, including consent for Special Immigrant Juvenile Status, release and detention placement.

Legislation being considered in the U.S. Senate would initially have placed the care and custody of children under the new Department of Homeland Security (DHS), a law enforcement agency focused on combating terrorism inside the U.S.⁶² This again failed to resolve the conflict facing an enforcement agency whose primary concern is security rather than adequately caring for immigrant children. The DHS should be able to focus exclusively on enforcement and reducing the nation's vulnerability to terror. It should not be required to handle responsibility for the custody and care of a population as vulnerable as immigrant and refugee children. Doing so endangers the best interest of the children our laws were meant to protect.

Fortunately, both the Gramm and Lieberman Substitutes being considered to this legislation would remove the care and custody of the children from the DHS and Department of Justice to the Office of Refugee Resettlement (ORR), which has significant child welfare expertise and experience with resettling unaccompanied refugee minors, although there is no time frame for when this must be accomplished by. Unfortunately however, the Bush Administration is backing the Gramm Substitute, which eliminates the fundamental safeguards of an attorney and guardian *ad litem* for immigrant and refugee children and also fails to establish a time limit within which children must be transferred to ORR. Unlike Gramm's proposal, Title XII of the Lieberman Substitute provides for the government appointment of an attorney for each child, as well as a guardian *ad litem* trained in child welfare to look after the best interest of the child. In addition to our full support for the Lieberman Substitute, which would fundamentally change the way immigrant and refugee children are treated in this country, FIAC wishes to focus on the following INS policies and practices in Florida, which should be immediately addressed and/or changed:

- 1 Children in INS detention should be released to the care of family or guardians as quickly as possible. A relative's immigration status should not be used against them when s/he comes forward to care for a child. Persons experienced in child welfare, not local deportation officers or juvenile coordinators, should make decisions regarding release. Detailed reasons for any denial

⁶² H.R. 5005/S. 2452 Homeland Security Legislation.

of release of a child should be provided expeditiously to the child and his/her attorney, and the child should have the right to challenge such a denial.

2. INS should grant access to juvenile court to all minors wishing to file juvenile dependency petitions who have alleged abuse, abandonment or neglect. The Juvenile Court, not INS, should determine the veracity of the allegations. INS should act affirmatively in the child's interest as soon as an allegation of abuse, abandonment or neglect is made.
3. Dental/forensic exams are not scientifically reliable and should not be the only manner to determine a young person's age. The benefit of doubt should be given to the child regarding his/her stated age. The INS should accept alternative evidence of age. Individuals deemed to be adults should be able to appeal that decision to an objective decision maker.
4. Children should not be kept in isolation at local hotels. If children are placed there, they should be afforded the same access and services as children at Boystown, including, but not limited to: adequate attorney access, recreation and education.
5. Non-violent, non-criminal children should never be commingled with youthful (or adult) offenders. INS should expand its foster and shelter care capabilities to prevent the placement of such children in "Secure" facilities, which violate the *Flores* agreement.
6. Children with ties to the community (such as family or legal representation locally) should only be transferred in exceptional circumstances. Children and their attorneys should always be notified before transfer and be provided a fair opportunity to challenge the transfer.
7. FIAC fully supports the recommendations by the American Bar Association on best practices for immigration proceedings in order to ensure respect for the rights of detained immigrant and refugee children. The ABA's best practices, which are attached to this report, encourage a more active role by the Immigration Court in protecting the rights of the child. FIAC further recommends that in Miami immigration proceedings not be held at Krome, an adult detention facility, where children must listen to gunfire from the firing range while sometimes waiting hours in the sun for their hearings.
8. Strip-searches, handcuffing, shackling, and other forms of "restraint" of non-violent, non-criminal children should be prohibited.
9. Interpreters in the child's best language should always be used in any conversation of substance with a child.
10. Telephone calls and any other private conversations of a child should not be used against him/her in removal proceedings.
11. Guardians *ad litem* should be appointed for children to look after their best interest. Such guardians should work closely with the child and have expertise in child welfare and the special needs of immigrant and refugee children.

Index of Attachments

Articles and Editorials

- 1 Soloman, Alisa. "The INS v. Juvenile Justice," *Amnesty Now*, Fall 2002.
- 2 Relin, David O. "Who Will Stand Up for Them," *Parade Magazine (The Herald)*, August 4, 2002, p 4.
- 3 Editorial. "The Littlest Refugees: They should not be entrusted to the INS," *The Miami Herald*, June 7, 2002.
- 4 Chardy, Alfonso. "Rights Groups Pleading for Young Guatemalan," *The Miami Herald*, April 4, 2002, p 3B.
- 5 Editorial. "When Immigrants are Children," *The New York Times*, March 25, 2002.
- 6 Elsner, Alan. "U.S. Immigration Agency a Harsh Jailer of Children," *Yahoo! Headlines*, March 12, 2002.
- 7 Soloman, Alisa. "Kids in Captivity," *The Village Voice*, February 27 – March 5, 2002.
- 8 Driscoll, Amy. "Boy, 16, Endures an Odyssey Through Immigration Lockups," *The Miami Herald*, February 8, 2002.
- 9 Schmitt, Eric. "Detained Nigerian Girl, 8, Finds Home With a Cousin," *The New York Times*, August 10, 2001.
- 10 Schmitt, Eric. "Case of Detained Nigerian Girl Takes U.S. Agency to London," *The New York Times National*, June 26, 2001, p A15.
- 11 Schmitt, Eric. "I.N.S. Both Jailer and Parent To a Child Without a Nation," *The New York Times*, June 24, 2001, p 1.
- 12 Amon, Elizabeth. "Access Denied," *The National Law Journal*, April 16, 2001, p 1
- 13 Driscoll, Amy. "A Conflict of Interest? Advocates decry INS's role as captor, counselor of refugee children," *The Miami Herald*, July 30, 2000, p 1L.
- 14 Ibarguen, Alberto. "The Littlest Refugees Need Better Protections," *The Miami Herald*, July 31, 2000, p 6B.
- 15 Barciela, Susana. "An incredible INS vs. a truthful teen," *The Miami Herald*, March 10, 2000.
- 16 Benjamin, Jody. "Somalian teen sent to Krome," *Sun-Sentinel*, February 18, 2000.
- 17 Associated Press. "Judge Stays Out of Immigration Case," February 18, 2000.
- 18 Editorial. "Give Abdul the Benefit of the Doubt," *The Miami Herald*, February 17, 2000, p. 8B.
- 19 Lynch, Marika. "Somali boy must wait to seek asylum," *The Miami Herald*, February 16, 2000, p. 3B.
- 20 Benjamin, Jody. "U.S. judge to hear case of Somalian 17-year-old seeking political asylum," *Sun-Sentinel*, February 16, 2000.

21. Benjamin, Jody. "Somalian teen faces struggle to stay in U.S.," *Sun-Sentinel*, February 16, 2000.

Correspondence, Memorandums, Urgent Actions and Letters

Letter to INS Commissioner James Ziglar from Women's Commission for Refugee Women & Children Executive Director Mary F. Diaz, July 31, 2002.

2. Letter to FIAC Executive Director Cheryl Little from INS Executive Associate Commissioner Johnny N. Williams, July 22, 2002.
3. Letter to Krome Officer in Charge Wesley Lee from FIAC Executive Director Cheryl Little, May 30, 2002.
4. Letter to INS Philadelphia District Director Kenneth Elwood from Amnesty International USA Director of the Refugee Program Jillian Kong-Sivert, May 21, 2002.
5. Amnesty International USA. "USA (Pennsylvania): Guatemalan child asylum seeker detained over 10 months," *Refugee Action*, May 17, 2002.
6. Amnesty International USA. "USA (Pennsylvania): Haitian Child Asylum-Seeker Detained," *Refugee Action*, May 17, 2002.
7. Letter to FIAC Executive Director Cheryl Little from INS Acting Director of the Office of Juvenile Affairs Steven J. Farquharson, received May 7, 2002.
8. Letter to US Attorney General John Ashcroft from FIAC Executive Director Cheryl Little, March 25, 2002.
9. Letter to American Immigration Lawyers Association South Florida Chapter President Mary Kramer and FIAC Executive Director Cheryl Little from Assistant Chief Immigration Judge Gail Padgett, March 12, 2002.
10. Letter to Chief Immigration Judge Michael J. Creppy from American Immigration Lawyers Association South Florida Chapter President Mary Kramer and FIAC Executive Director Cheryl Little, February 5, 2002.
11. Letter to FIAC Executive Director Cheryl Little from INS Deputy Executive Associate Commissioner Anthony S. Tangeman, May 11, 2001.
12. Letter to FIAC Supervising Attorney Christina Kleiser from INS Officer in Charge, Michael L. Webster, April 5, 2001.
13. Letter to INS Deputy Executive Associate Commissioner Anthony S. Tangeman from FIAC Executive Director Cheryl Little, April 4, 2001.
14. FIAC Memorandum, "Minors in INS Detention in South Florida," December 14, 2000.

The INS v. Juvenile Justice

Every year the INS locks up some 5,000 children. For most, their only crime is seeking asylum.

by Alisa Solomon

Alfredo Lopez Sanchez knew he was facing a tough journey when he fled his abusive home in Guatemala last summer and made his way to the United States. Fearing for his life, the 15-year-old boy felt he had no choice but to seek refuge in the "land of freedom." But that is not what he found. For more than a year now, the Immigration and Naturalization Service (INS) has penned him in jails, in youth detention centers, and even in a Miami hotel room. A short, Mayan boy with intense eyes and expressive face, Alfredo has been transferred nine times from facility to facility, often shackled by the wrists and ankles. Speaking only the rare dialect Southern Low Mam, he often could not understand what was happening or why.

Of course, advocates for child refugees who speak perfect English have just as hard a time understanding why the INS treats kids in such arbitrary and pitiless ways. The INS locks up some 5,000 children each year, most of them boys averaging 15 years of age.

According to INS spokesperson Karen Kraushaar, when minors enter the U.S. illegally—like adults, usually seeking democratic free-

Alisa Solomon is a staff writer at the New York-based Village Voice, where an earlier version of this report appeared.

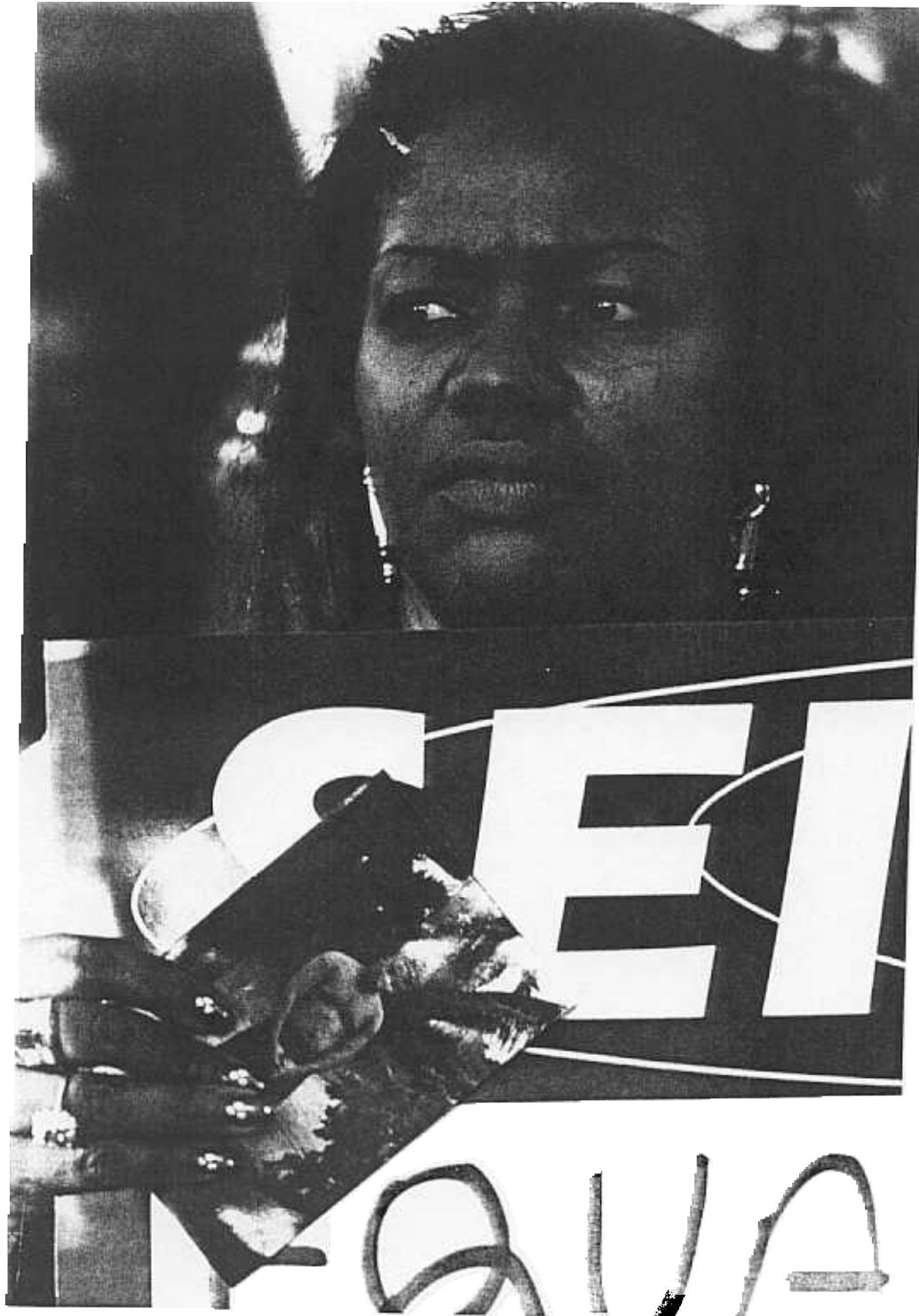


STEVEN RUBIN

doms and economic opportunity, or fleeing persecution or war—the government takes great pains to locate U.S. relatives and typically manages to turn kids over to them within three days. In the thousands of instances in which such efforts fail, though, the agency places children into custody in one of some 90 facilities around the country—usually campus-like shelters run by nonprofit agencies, but sometimes in high-security prisons that incarcerate U.S.-citizen juvenile offenders. Meanwhile, the immigration courts consider whether the children will be de-

ported. While that process averages a little more than a month, says Kraushaar, it can drag on much longer if there's trouble finding a sponsor or if the agency fears that the purported "relatives" are really smugglers who sell kids into indentured servitude or prostitution.

More than a third of detained youngsters wind up like Alfredo, languishing for months, and sometimes more than a year. A 1985 class-action suit, *Flores v. Reno*, challenged, among other things, the often lengthy terms and harsh conditions of minors' confinement. Its settle-



Far left: A minor, Algerian asylum seeker Mohamed Boukrag, has been held at an adult facility since October. With his lawyer, Erin Corcoran. Left: Julien Heronne holds a photo of her son, INS detainee Ernst Poulard, 17, as she protests with 100 people in front of a Miami INS building in January.

Senate bill to reform the gravest problems, including the lack of guaranteed attorneys or guardians. INS commissioner James Ziglar created a special office of juvenile affairs and promised reforms. But now, as "homeland security" overwhelms the congressional agenda and INS restructuring remains up for grabs, the kids are all but forgotten. "This is a good time to push," says Bill Frelick, director of Refugee Programs for Amnesty International USA. "We had seen some movement in Congress and if we keep pressure up, we can make a real difference."

AIUSA launched a membership action on behalf of three children last spring, urging members to write the INS, demanding compliance with Flores as well as with international law and standards. These prohibit detaining minors seeking asylum, much less subjecting them to such harsh conditions.

In addition to highlighting Alfredo's case, AIUSA has also rallied behind Ernst Poulard, a 17-year-old Haitian, and Malik Jarno, a mentally retarded youth from Guinea. Ernst arrived in the U.S. last December, expecting to join his mother, who has been a lawful permanent resident here since 1988.

But because Ernst did not wait for official entry documents, the INS apprehended him upon arrival and put him in detention. His pro bono attorney, Christina Kleiser of the Florida Immigrant Advocacy Center (FIAC), faced what she describes as "an absurd level of red tape" and tried to rectify "the fundamental lack of due process." After six months of detention, Ernst was finally released to his mother.

Malik has not been so lucky. Orphaned at 16 by violence in Guinea, he used false documents to enter the U.S. in January 2001 and requested

ment in 1997—after 12 circuitous years of appeals that went all the way to the Supreme Court—established national guidelines requiring, for instance, that children be detained in the least restrictive settings possible.

But a report last September by the Office of the Inspector General found that the INS was placing too many kids in high-security juvenile prisons, needlessly using restraints on them and failing in other ways to live up to the 1997 settlement. Of the 4,136 unaccompanied minors held for more than 72 hours in fiscal year 2000,

the report detailed, more than a third spent at least some portion of their detention in prisons. Having committed no offense other than seeking refuge, they are locked behind bars and razor wire, watched by guards trained to control criminals.

Time To Push for Change

So children's advocates and human rights groups have galvanized around the issue again, documenting abuses and lobbying legislators. In March, Diane Feinstein (D-Calif.) introduced a

AP PHOTO/WILFREDO LEE



STEVEN RUBIN

For 15 months "Fega," 8, was held in a Miami shelter where she suffered psychological trauma. The Nigerian girl sits in the audience at a Senate hearing on the Unaccompanied Alien Child Protection Act.

political asylum. Relying on controversial x-ray tests, the INS insisted he was 18 and placed him in an adult prison. There, where nobody spoke his West African language, Puhlar, Malik endured nine miserable months before even seeing a lawyer or having an immigration hearing. In the meantime, his lawyers say, fellow inmates abused him and guards pepper-sprayed and severely beat him.

When lawyers provided a birth certificate, he was merely moved to solitary confinement with a note on his door saying, "Juvenile." In solitary, Malik had to submit written requests for permission to phone his lawyers or even to take a shower. Six months later, on April 10, the INS finally acknowledged that his birth certificate was authentic and transferred him to a juvenile facility. After a lengthy and humiliating hearing, his asylum application was denied. He remains in detention as his appeal crawls through the system.

Theory As Fact

The use of x-rays to determine age—they measure growth of wisdom teeth and whether the radius and ulna bones have fused in the wrist—is hotly contested. Adults have narrower legal avenues of relief and usually face more severe

detention conditions than those under 18, so undocumented migrants have good motives for trying to pass as minors.

According to Dr. Robert Trager, a dentist with offices at JFK and La Guardia airports, who has conducted some 1,500 such tests for the INS, undocumented travelers "try every trick in the book to get in here and you've got to feel sorry for them, but I can't let personal feelings get in the way of science." Claiming 96 percent accuracy, Trager finds that 9 out of 10 patients are lying.

But Dr. Herbert F. Frommer, director of radiology at New York University's College of Dentistry, says that "Dr. Trager's position has no scientific validity." In a sworn affidavit, Frommer cites a "wide variation in the age at which third molars erupt in the mouth" because of differences in "race, gender, and ethnic origin" among other factors. Many orthopedists regard the wrist-bone test as equally imprecise.

Kraushaar defends the tests: "What if a terrorist who was 19 said he was 16 and an orphan, and the story didn't check out, but we released him and he went and blew up a building? Would it be his attorney that would take the fall? I don't think so."

Thus Mohamed Boukraghe spent 19 months in the adult facility in Elizabeth, New Jersey, a fluorescent-lit former warehouse where detainees are never allowed outdoors. Orphaned at age 10 in his native Algeria when a car bomb blew up his parents and sister, he lived with an aunt until she threw him out, concerned that Mohamed's father's reputation as a "traitor" would harm her family's standing. Mohamed stowed away on a boat to France, then made his way to Italy, where for about four years he picked up menial jobs and squatted in abandoned buildings.

In October 2000 he joined some other workers on a boat he thought was going to Canada, but the INS fished him out when the ship docked in New Jersey. They took him right to Trager's office at the airport, where the doctor pronounced him to be at least 18; Mohamed said he was 16.

According to a psychiatric evaluation by Dr. Alice Kross Frankel, Mohamed was "suffering from both depression and traumatic stress reactions" that were exacerbated by his imprisonment and "altogether inappropriate placement." He was wetting his bed when he first arrived at Elizabeth and was still having nightmares a year-and-a-half later. Frankel recommended Mohamed's prompt release to a non-profit youth home that had agreed to take him.

Meanwhile, immigration judges rejected his asylum request and then his appeal, forcing attorney Erin Corcoran of the Hebrew Immigrant Aid Society to race against the clock: Mohamed's 18th birthday was approaching and the only relief left was "special immigrant juvenile status," a sort of junior green card for youngsters who are abandoned, abused, or neglected. But even if the INS had recognized Mohamed as a juvenile, Corcoran would still be faced with the problem that the INS usually

Having committed no offense other than seeking refuge, the children are locked behind bars and razor-wire, watched by guards trained to control criminals.

refuses to permit hearings of such cases in family court, the venue that decides who qualifies for this special status.

Mohamed turned 18 on June 25, and a couple of weeks later, Corcoran got a call from another detainee, reporting that Mohamed had been removed. After days of trying to reach his deportation officer, she was relieved, if surprised, to learn that the youth had been sent to Italy.

Conflict of Interest

Advocates are hopeful that once Congress revamps the INS and Homeland Security, responsibility for unaccompanied minors may end up at the Office of Refugee Resettlement. ORR uses a fuller set of tools, including interviews and psychiatric evaluations, to determine age. And it does not have a built-in conflict of interest: the job of both serving the best interests of the children in its custody and of trying to deport them.

The INS's dual function can make children pawns in a larger game. The supervisor of the juvenile division in Florida, for instance, brazenly told a judge at a hearing in Alfredo's case last February that he would not release the boy to a foster care program because he was waiting for Alfredo's brother, living illegally in the U.S., to come claim him—and to be put into deportation proceedings himself.

In a more alarming example, zealous INS officers deported 13-year-old Isau Flores-Portillo, a street kid from Honduras, even though his asylum appeal was still pending. Pro bono attorneys for Isau believe he faced torture or even death back home, where, according to a 2000 State Department report, "Honduran security forces were suspected of an estimated 200 extrajudicial killings, many involving persons under 18." They sued the government for this alarming violation of Isau's rights. And because, as attorney Javier Maldonado puts it, "they really didn't want to defend that in front of a court," the INS tracked down Isau in May and brought him back to the U.S.—only to send him straight to detention.

Isau is currently being held at Berks County Youth Center in Leesport, Pa., a low-security shelter without bars or barbed wire, which provides classes each day and soccer games. But even with the relative amenities of the shelter environment, kids miss out on the simple things most teenagers in America take for grant-

ed: enough time in a shower to rinse off the soap, or having a pen and paper in one's room. The kids at Berks also report being threatened with transfer to a high-security prison wing if they misbehave.

More important, detention presents special emotional hardships for teenagers: loneliness, boredom, and the shame and intimidation of being treated like a criminal. A Jamaican teen spent a month-and-a-half in the high-security wing at Berks. Even worse than seeing kids thrown and pinned to the ground by guards for the crime of lifting an arm, she says, was suffering the acute adolescent embarrassment of having to dispose of sanitary napkins in full sight of the boys because there were no trash bins in the bathrooms.

In Miami, FIAC attorneys who represented Alfredo wanted to give him a donated Christmas present of a jigsaw puzzle and art set while he was confined to the hotel room with nothing to do and no one who spoke his language. The INS barred the gift as "contraband."

And his chances of enjoying the basic gift of freedom, a right all human beings deserve, seem to be dwindling by the day. His asylum request was denied even though the judge found Alfredo credible, accepted expert testimony that he was suffering post-traumatic stress disorder, and agreed that he would likely face further abuse if returned to Guatemala. Indeed, the judge stated, "If this court were deciding whether the respondent should be allowed to remain in the United States for humanitarian reasons, it would be a simple decision." Yet because in legalistic terms the violence he faced in Guatemala was not perpetrated by the state, Alfredo did not qualify for asylum.

FIAC appealed the decision, and finally, in late July Kleiser received a one-sentence response upholding the denial. Outraged, she is scrambling to file motions to reconsider and for a stay of deportation. Meanwhile, although Alfredo is a prime candidate for special immigrant juvenile status, the INS has so far refused to let his case be heard before a family court. Kleiser fears he could be returned to certain violence any day.

Alfredo and other children like him have little hope once the wheels of justice roll over them. But says Kleiser, "Support actions by the public really do help, and they are needed more than ever." ■



A century ago when Lewis Hine photographed this Russian immigrant at Ellis Island, the girl faced a hard life, but not hard time in an adult jail. Today's INS has revised the poem on the Statue of Liberty from "Give us your tired, your poor..." to lock up children until they can prove they are innocent and eligible for asylum.

ALFREDO LOPEZ SANCHEZ, the 16-year-old Guatemalan boy featured in this article, remains in detention.

Send appeals requesting an immediate review of the boy's request for parole and call for his immediate release. Urge transferring Alfredo to Florida so that he can be near his lawyer and where he has three offers of sponsorship.

You may also write that Alfredo's continued detention appears to violate international standards for child asylum seekers, including UNHCR Guidelines. Also point out that Alfredo's detention appears to contravene the INS's own policy on the detention of child asylum seekers. Urge that your request be dealt with promptly, given the extraordinary details of this case. Please quote Alfredo's INS reference number in your correspondence: # A79-038-393.

Contact: Kenneth Elwood, USINS Philadelphia District Office, 1600 Callowhill Street / Philadelphia, PA.



The Herald

SUNDAY, AUGUST 4, 2002

PARADISE



Edwin Muñoz fled his native Honduras for his life, only to become one of the thousands of foreign children who each year are detained, sometimes incarcerated and even abused in the custody of U.S. immigration authorities.

Edwin Muñoz, 16, was locked in a cell in San Diego Juvenile Hall for 18 hours a day, beaten by authorities and held among violent criminals for nearly six months. Recently, he told his story before the Senate Judiciary Committee as Congress ponders the future of the Immigration and Naturalization Service.

Who Will Stand Up For Them?

A REPORT By David Oliver Relin

INSIDE: In Step With Jackie Collins...By James Brady

Each year, thousands of foreign children—some as young as 18 months—are Many are deported without having their claims for asylum heard. With no parent or guardian...

Who Will Stand

Edwin Muñoz

BY THE TIME HE TURNED 13, life in his native Honduras had become unbearable for Edwin Muñoz. His father was dead. His mother had abandoned him. Edwin lived with a cousin who forced him to beg on the streets and beat him with car tools if he didn't return with enough money. Edwin was afraid to report the abuse and risk being thrown out, because he'd heard that Honduran authorities killed homeless children.

So, with little hope for an endurable life in his homeland, Edwin walked and hitchhiked across Honduras, Guatemala and Mexico, working for food and sleeping in ditches. In August 2000, he was apprehended as he tried to sneak into California. But he wasn't worried. "My whole life," he says, "I'd heard wonderful things about America and how children were treated there."

Then the dream that had drawn Edwin Muñoz so far north was crushed.

Sitting up straight in a white shirt and black tie, Edwin, now 16, tried not to cry at a recent hearing of the Senate Judiciary Committee. He explained how, in shackles, he was shuffled between U.S. Immigration and Naturalization Service (INS) facilities until he was taken to San Diego Juvenile Hall, which he called "the worst place I have ever been in my life." There, Edwin testified, he was locked in his cell 18 hours a day, beaten with sticks by authorities, doused with pepper spray and held among violent criminals for nearly six months. "I cried a lot in my cell," Edwin said, "wondering why every-

AGE WHEN
DETAINED: 14

HOMELAND:
Honduras

CLAIM FOR ASYLUM:
Fled life-threatening
abuse in his country.

TREATMENT: Edwin
says he was locked in
his cell for 18 hours a
day, beaten with sticks,
doused with pepper
spray and held among
violent criminals for
nearly six months.

At a Senate hearing
earlier this year, Muñoz,
now 16, testified:
"I cried a lot in my cell."



thing was turning out so badly for me in the U.S. and if I would ever be free."

Lost in the system

Edwin's story is all too common. The INS says it placed more than 4,600 foreign minors in detention last year. While the average age of the children in custody is 15, some are as young as 18 months. The largest group is Latin Americans caught crossing the Mexican border. But they come from as far away as China and Nigeria, apprehended at airports or on immigration sweeps, part of a rising tide of 20 million refugee children worldwide.

And though most are guilty of nothing more than entering America illegally, more than 30% of these children

are incarcerated among violent criminals. Others are warehoused in minimum-security facilities while their childhoods tick away. Worst of all, many are deported without their claims for asylum ever being heard even if, like Edwin, they fled life-threatening abuse in their homelands.

What should happen to them?

In the aftermath of Sept. 11, and as Congress considers dismantling the INS altogether, what should happen to the children in its charge? Sen. Dianne Feinstein (D., Calif.) believes that, while we need to tighten our borders to prevent terrorists from entering our country illegally, we also must provide protections for helpless children. "We

cannot continue to allow children who come to our country—often traumatized and guilty of no crime—to be held in jails and treated like criminals," she says.

Senator Feinstein became outraged when she learned about Phanupong Khaisri, a 2-year-old Thai child detained at the Los Angeles airport. Nicknamed "Got," the child had been drugged by human smugglers and used as a decoy to deceive airport authorities. Despite the fact that he'd been sold by his mother and faced danger if he returned to Thailand, the INS sought to deport Got. Senator Feinstein and others interceded. In January 2001, Feinstein introduced the Unaccompanied Alien Child Protection Act, which would wrest

BY DAVID OLIVER RELIN

COVER PHOTOGRAPH BY EDDIE ADAMS

PAGE 4 • AUGUST 4, 2002 • PARADE MAGAZINE

incarcerated by U.S. immigration officials after arriving alone or being abandoned here.

Up For Them?

custody of these children away from the INS and create an Office of Children's Services to provide for their care.

"I'm really hopeful we can correct this," says Sen. Sam Brownback (R., Kan.). "because this just doesn't need to take place the way it is."

Mark Matese, the INS's director of juvenile affairs until earlier this year, admits that the agency's treatment of the 500 or so children in its custody on any given day needs to be improved but points to the challenges. "If these were Americans, we'd know who they were in hours," he says. "With these kids, it can take a lot longer to find out who they are. We want them to be safe, but we have a duty to make sure America is safe."

During his testimony at the Senate hearing last February, Stuart Anderson, the INS's executive associate commissioner, contended that "the INS has made great strides in improving custody conditions for juveniles. But we can do more."

Fega

AGE WHEN DETAINED: 7

HOMELAND: Nigeria

CLAIM FOR ASYLUM:

Abandoned in the U.S. by her mother, an illegal alien who was afraid to claim her.

TREATMENT:

Fega was marooned at an INS shelter for 15 months. A distant cousin offered to take her in, but the INS chose to hold Fega for two more months.

To Wendy Young of the Women's Commission for Refugee Women and Children, an advocacy group that assists asylum-seekers, it's inconceivable that the situation will improve until the INS is out of the picture completely. "By definition, the INS has a huge conflict of interest," says

Young, who was an expert witness at the Senate hearings. "As a jailer and prosecutor, the INS is incapable of also looking out for the welfare of children."

"Are you my mommy?"

"As long as law-enforcement officers, rather than trained child-welfare workers, are in charge of these children, terrible mistakes will be made," says Christina Kleiser of the Florida Immigrant Advocacy Center. She points to the

"Got"

AGE WHEN DETAINED: 2

HOMELAND: Thailand

CLAIM FOR ASYLUM: Sold to human smugglers by his mother and used by them as a decoy.

TREATMENT: Despite the obvious danger Got would face if he returned to Thailand, the INS sought to deport him after he was discovered at the Los Angeles airport.



At age 2, Got (Phanupong Khairi) was detained by the INS. Now 5, he recently was granted semi-permanent immigration status.

case of one of her clients, a Nigerian girl named Fega who was arrested at age 7 when she arrived alone at New York's Kennedy Airport with a fake passport. Her mother, an illegal alien, was too afraid of being deported to claim her.

For the next 15 months, Fega was marooned at an INS shelter on the outskirts of Miami. She picked up enough English to ask every woman who visited, "Are you my mommy?" A distant cousin

—a nursing-home administrator in Connecticut—offered to take Fega in as soon as she heard of her plight. Instead, the INS chose to hold Fega for two more months. "How can putting a child through an experience like that not scar her for life?" Kleiser asks. "Even the INS is smart enough to know that."

"No matter how weak or strong any of these kids' cases for asylum may be, the important thing is giving them the

continued



Fega (c), now 9, attended the recent hearing of the Senate Judiciary Committee with her cousin, Lara Alatisa (r).

How You Can Help

If you'd like to support legislation designed to improve the INS's treatment of foreign children or would simply like more information about the subject, visit www.womenscommission.org. In the Advocacy section, you'll find a letter ready to send to your Congressman. And in the Reports section, click on "Prison Guard or Parent?" for the most in-depth study currently available on the INS's treatment of minors.

For more on the treatment of refugee children, to send e-mail to a favorite PARADE columnist or to search our archives, visit www.parade.com.

www.parade.com

WHO WILL STAND UP/continued

opportunity to be heard," says Andrew Morton, a lawyer who represents four Tanzanian teenagers. For eight months, Herry Kiegemwe, Fikiri Lusingo, Abraham Tembo and Anthony Lumumbo were warehoused in an INS facility in central Pennsylvania. In the U.S. legally, with valid visas for an international Boy Scout jamboree, the teens say they were detained after approaching a Washington, D.C., police officer and inquiring whether it was possible to turn their tourist visas into student visas.

At the facility, they lived in a dorm and attended classes but were not free to leave. "Before I came here, I knew America was a beautiful country, famous for human rights," Anthony says. "But I don't think America is doing justice to us." In March, the boys finally were moved together into foster care in the Midwest.

Morton says a majority of the juveniles apprehended by the INS appear in immigration court without assistance of any kind. "I know of cases where toddlers have appeared in court unrepresented," he says. "How can you pretend to be concerned with kids' welfare when you send a scared child alone up against a pit-bull prosecutor?"

"Your worst days are behind you." Back in the crowded Senate hearing room, tears trickled down Edwin Muñoz's nose as he finished telling his story. He explained that he was speaking out "so that no other child will have to go through what I went through with the INS."

In truth, that's up to people like the politicians at the hearing. The message Edwin traveled to deliver has now been heard loud and clear. And bipartisan pressure is building to break apart the INS and create an office equipped to deal with the needs of children.

Sen. Edward Kennedy (D., Mass.), clearly moved like everyone else in the room, told Edwin, "I hope the U.S.A. lives up to your dreams. Your worst days are behind you." And they are. Edwin won his asylum and now lives in Michigan with a foster family. Seeing him here at the heart of the American government, sitting proudly in his seat, it was clear how far he'd come from his days of desperate fear in Honduras and how far—now that he's safe and in school—he'll be able to go.



CEOs Clean Up While Stockholders Get Cleaned Out

Don't expect to find these execs in line to collect unemployment checks.

When high-tech companies hit the skids, many investors lose their savings and workers lose their jobs, but the "retiring" CEOs of those companies often get rich. *Forbes* magazine says Lucent stock dropped 68% in Rich McGinn's last year as CEO, but he collected \$11.3 million and an \$870,000 pension when he left. John Roth saw Nortel's stock fall 90%, and 30,000 employees lost their jobs, yet he departed with a bonus of \$3.3 million and a \$585,000 annual pension. Xerox stock lost 89% of its value, and 5200 jobs were cut, yet Rick Thoman got a \$4.8 million package plus \$800,000 in annual retirement pay. But pity poor Tim Koogle: Yahoo's stock lost 94% of its value, and he got \$0 when he left as CEO. (He's still on the board.)

All You Should Know About Drug Abuse

For years, parents and educators have been told to talk to kids about drugs. But how much do most of us really know? A CD-ROM titled "Drugs of Abuse" could help. It provides information on commonly used narcotics, alcohol, inhalants and marijuana, as well as the latest "designer drugs" and fads. It also explains warning signs, gives street terms, tells how and where to get help, offers an interactive drug quiz, and includes other features. It's free (except for a shipping fee of \$5.95) from the Schaefer Education Foundation. To order, call 1-877-843-2358; ask for "Special Offer CD-3000."

When Man's Best Friend Isn't Friendly

Americans love dogs—we have 58 million. But untrained canines can be dangerous, and 5 million people are bitten in the U.S. each year. Larry Lachman, an animal-behavior specialist and author of *Dogs on the Couch*, blames owners or breeders who don't screen or train their dogs. (Owners can visit www.apdt.com to find a certified trainer.) He says no breed is always aggressive, but those bred for guarding, sport-fighting or herding have higher risks. To avoid a bite:

- Never approach an unknown dog.
- Stay still if approached; running or screaming incites a dog.
- Don't disturb a dog that's eating, sleeping or caring for puppies.
- Don't pet a dog without letting it see and sniff you first.

You can blame most dog bites on the owner—but since you don't know if a dog is trained, it's smart to keep a distance.

Does School Size Matter?

Since 70% of America's high schoolers now go to schools with 1000 or more students, the classroom shootings of the last few years have made some educators wonder if big schools are harmful to our kids. What do parents and teachers think? A poll by the nonprofit firm Public Agenda showed that parents prefer smaller high schools because they think students get more attention and care. But, surprisingly, teachers in both large and small schools gave students low marks on how well they learned (and everything from school spirit to the respect they showed toward others). And both parents and teachers said smaller classes and better discipline mattered more than school size. In fact, while education reformers may focus on size, neither the parents nor teachers said big schools were their biggest concern.

WHAT INSURANCE DO YOU NEED WHEN YOU RENT A CAR?



You may not require that extra protection many agencies are so happy to offer.

When you rent a car, you're routinely offered a loss-damage or collision-damage waiver. Do you need it? The answer depends on whether you already have auto insurance and what it covers. If you have collision and comprehensive coverage, it probably will pay for repairs but may not pay "incidental" rental-company costs, such as loss of use, loss of value and claim-processing charges. Many premium credit cards also will supplement your coverage, but you must use the card to pay for your rental and decline the loss-damage waiver. To be sure, read the fine print of your insurance and credit-card agreements and ask any questions concerning them before you rent.

THE LITTLEST REFUGEES: THEY SHOULD NOT BE ENTRUSTED TO THE INS

Editorial

The Miami Herald

June 7, 2002

The case of Alfredo López-Sánchez is a strong argument for why the U.S. Immigration and Naturalization Service should not be charged with the custody of unaccompanied minors who enter the country illegally. There is a fundamental conflict here between the INS's law-enforcement mission and the equally compelling need to protect the child's best interest. Legislation before Congress would require that minors like Alfredo get humane treatment and proper legal protections.

In INS detention almost a year now, teenaged Alfredo remains at a shelter in Berks County, Pa. -- more than 1,200 miles from his Miami attorney and an interpreter, both of whom understand the rare Mayan language that he speaks. Alfredo was 16 when he entered the United States after fleeing rural Guatemala. He has said that he ran away from a mentally ill mother and an abusive father who killed his sister in front of him.

FREQUENT TRANSFERS

While in INS custody, he has been bounced between shelters, jail cells and hotel rooms; in one two-month period he was moved seven times. The INS has not allowed him to bring his case before child-welfare experts in juvenile court, a process that could lead to his receiving a special juvenile visa and placement with a guardian.

Alfredo is only one of some 5,000 unaccompanied minors placed by INS in shelters and jails every year. The complaints nationwide about these children's treatment are remarkably consistent. The Women's Commission for Refugee Women and Children documented them in a report last month, *Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children*. Many children face capricious transfers like Alfredo's and complicated immigration proceedings without benefit of a lawyer.

"Children often endure prolonged detention, do not have access to interpreters or legal assistance and may be detained with adult offenders," said Wendy Young, of the commission. These children are fleeing abuse -- forced marriages, female genital mutilation, domestic violence, molestation, neglect -- and wars where they could be forced into military service. Their vulnerability is complete.

SPECIAL NEW OFFICE

U.S. Sen. Dianne Feinstein, D-Calif. has introduced legislation that would entrust these children to a new Office of Children's Services designed to recognize their special needs and circumstances. This office would be in the Justice Department, but separate from the INS. It would establish standards for detention, custody and release. Children would get a guardian ad litem and access to legal counsel.

This legislation has been rolled into another good bill (S 2444) introduced by Sen. Edward Kennedy, D-Mass., that calls for INS reorganization. The Senate should approve its measure and push to have it trump an inferior companion bill adopted earlier by the House.

6/7/02

The agency responsible for prosecuting people who are in the United States illegally should not also be charged with overseeing the welfare of those in this group who are minors. That task should be reserved for experts who can concentrate foremost on children's welfare rather than their legal status.

Rights groups pleading for young Guatemalan

BY ALFONSO CHARDY
achardy@herald.com

Fourteen immigrant-rights organizations have written U.S. Attorney General John Ashcroft, urging him to order the release from detention of a Guatemalan teenager who speaks only a rare Mayan language and is seeking asylum in the United States.

Alfredo López Sánchez, 16, remains in the custody of the Immigration and Naturalization Service at a shelter for unaccompanied children in Berks County, Pa.

Alfredo was detained after he crossed the border with Mexico without papers last summer.

Ashcroft's spokesman, Dan Nelson, did not return a call to his office in Washington seeking comment.

The case has become emblematic of a new legal struggle by immigration rights advocates to provide unaccompanied children in INS custody access to wider civil rights and legal representation.

Like hundreds of other children who annually enter the United States without parents

and illegally, Alfredo initially was sent to Boystown, an emergency shelter for immigrant children in southwestern Miami-Dade County.

When Boystown officials concluded that Alfredo was planning to escape, they moved him to the Monroe County Jail. Later, Alfredo was moved to the children's facility in Pennsylvania.

On March 6, U.S. District Judge Federico Moreno denied Alfredo's motion that he be allowed to stay in South Florida pending resolution of his asylum case.

At a hearing Feb. 7, Moreno heard the case as outlined by lawyers from Miami-based Florida Immigrant Advocacy Center.

The lawyers said Alfredo told them he has a mentally ill mother and an abusive father who killed his little sister in front of him.

In the March 25 letter to Ashcroft, the 14 organizations from Florida and other parts of the country asked Ashcroft to "release Alfredo from INS custody" and "prevent any further deterioration of his well-being."



March 25, 2002

When Immigrants Are Children


Each year, more than 4,000 children arrive in America unaccompanied by an adult. Some are teenagers looking for work, but others are toddlers used as props by smugglers or young people fleeing abuses like forced recruitment as soldiers or arranged marriages. Except for Elián González, the Cuban boy whose mother drowned en route to America in 1999, they get little attention. But Elián's case was unusual in another way — he was allowed to stay with family and given legal representation.


Hundreds of children escaping mistreatment find more of it when they arrive here. Last year, of nearly 5,000 children in the custody of the Immigration and Naturalization Service, a third spent time imprisoned in a secure detention facility such as a juvenile jail. While some of these minors were themselves accused of violent crimes, the vast majority were children who did nothing more than cross a border. Some are mixed in with violent juvenile delinquents, and a few have been held in jail for weeks after being granted asylum. When taken from jail to court hearings, they are shackled and handcuffed, and no arriving minor is entitled to free legal representation. One 16-year-old boy was locked in a hotel room for five weeks alone, without anyone to talk to, anything to read or a change of clothes. An 18-month-old girl was taken to court for a hearing in Florida two years ago with no lawyer or other adult to represent her.

A bill proposed by Senator Dianne Feinstein of California would change the way the I.N.S. deals with unaccompanied children. It would not affect whether they are eventually granted asylum or sent back home, but it would help the children get better treatment and provide adults to look out for them during the months of waiting. The bill would set up an Office of Children's Services outside the I.N.S., provide a free attorney for the minor and appoint a guardian to investigate the child's situation and make recommendations to the court. The changes are necessary and modest and might even save money by speeding up cases.

The problem of unaccompanied minors is a complex one that touches on the I.N.S.'s varied ills. The agency's staff is overstretched and undertrained, and resources are short — more beds in children's shelters are needed, for example. The truth about an arriving child's circumstances, and even age, is often hard to find. Most problematic the agency has a dual mission — it protects America's borders from those who do not deserve refuge, while helping those with a valid reason for flight. Decisions about minors' treatment, however, should be made by

people who do not have this conflict. Children who come to the United States alone have survived terrible hardship at home and on the journey. Every precaution should be taken to see that America does not welcome them with more trauma.

 Yahoo! Canada News

[Yahoo! Canada](#) - [My Yahoo!](#) - [Help](#) - [Français](#)
 Reute


Yahoo! Headlines

[Home](#) [Top Stories](#) [World](#) [Business](#) [Sports](#) [Entertainment](#) [Science](#) [Automotive](#) [Health](#)

Tuesday March 12 11:43 AM EST

U.S. Immigration Agency a Harsh Jailer of Children

By Alan Elsner, National Correspondent

MIAMI (Reuters) - The U.S. government recently locked Alfredo Lopez Sanchez, a 16-year-old Mayan boy from Guatemala, in a hotel room alone for five weeks with nothing to read, no one to talk to and without even a change of clothing while it worked to deport him.

Sanchez, who speaks a rare dialect called Southern Low Mam and understands little Spanish and almost no English, came to the United States in June 2001, escaping an abusive father who had allegedly killed one of his siblings in front of his eyes.

Sonia Cabrera, who speaks his language, is ready to offer him a home in Miami but the Immigration and Naturalization Service refuses to release him, saying he is a flight risk. The agency believes he has an elder brother living as an illegal immigrant somewhere in the United States whom he plans to join.

Each year the INS holds in custody about 5,000 unaccompanied children caught trying to enter the United States without papers. Human rights advocates say many are held for months in appalling conditions without legal representation.

"As a child welfare expert with knowledge of the foster care and juvenile justice systems, I find it shocking to see how children in INS custody are treated," said Julianne Duncan, director of children's services for the United States Conference of Catholic Bishops.

Testifying to a Senate immigration subcommittee hearing in February, Duncan said, "Thousands of children each year are held in detention, some with juvenile criminal offenders, with little or no access to legal assistance and with decreasing ability to reunite with family members."

Sanchez has been held by the INS in at least four locations, including a Florida county jail, a juvenile detention center in Pennsylvania and the hotel room. He has been moved eight times

Yahoo! News

• [Breaking News](#)

Updated 24 hours/day

• [Entertainment](#)

Music, TV, Film, more

• [Full Coverage](#)

In-depth news

• [Sports - NHL](#)

Scores, Stats, more

• [Technology](#)

Hi-tech & Computing

• [Photo Gallery](#)

Photo Highlights

• [Weather](#)

The latest forecast

• [Y! Mobile](#)

WAP, SMS Alerts

ADVE



without prior notification of his lawyer.

"He was suffering from post traumatic stress syndrome when he arrived and his condition has worsened since he has been here. He has been isolated and terrified. He is shackled whenever he is transferred or brought for a meeting with his lawyer," said Cheryl Little of the Florida Immigrant Advocacy Center, which is representing Sanchez.

Sanchez spent the past five weeks alone locked in a room of a Comfort Suites Hotel in Miami with guards outside the door.

ONE T-SHIRT

He had one blue T-shirt, one pair of sweat pants and one set of underwear, which he washed in the sink with hand soap every night. He had no sweat shirt or sweater.

"Each day the maid comes in and changes the sheets. The bed gets clean clothes but I don't," he told his lawyer.

The U.S. Senate is considering a bill that would give children in INS custody more rights, including the right to a lawyer. It would also establish a new office of children's services within the Department of Justice, establish minimum standards for the custody of unaccompanied minors and expand shelter care and foster care programs.

Sanchez said he ran away from home after seeing his alcoholic father beat his mother so severely that she fell on top of her youngest baby, who died. The INS rejected a request from Reuters to interview Sanchez, saying parental permission was required.

"We accept that the father is an abuser and the mother is mentally ill but those are the rules. You need their written approval," said Patricia Mancha, an INS public affairs officer in Miami.

When Reuters asked why Sanchez was not provided with a change of clothes, he was given an extra set, a dictionary, a pencil and paper and a haircut within three hours. But when his lawyer showed up at the Krome detention center for a scheduled meeting with her client later that evening, the INS brought the wrong boy and the meeting never happened.

According to Wendy Young of the Women's Commission on Refugee Women and Children, the INS frequently denies release to children who have been granted asylum by an immigration judge while it prepares an appeal, and has blocked abused children from pursuing special immigrant juvenile visas.

PEPPER SPRAY

At the Senate hearing, Edwin Larios Munoz, 15, from Honduras, told how he was arrested when he crossed the border, having escaped an abusive home. He was taken to a juvenile prison in San Diego where he spent six months mixed with a population of violent offenders.

"The officers did not know why I or other children picked up by the INS were being held there. They treated us the same as the others, the criminals. They were mean and aggressive and used a lot of bad words. They sometimes hit me with their sticks and ... often used pepper spray," he said. Munoz was eventually released into foster care in Michigan.

Sanchez is still struggling for freedom. Last Thursday he appeared in U.S. District Court in Miami where Judge Federico Moreno said, "This court disagrees with the INS determination of this young man as a flight risk. But that does not permit me to dictate to the INS where to place a juvenile alien."

Sanchez was dragged away in shackles, weeping. Over the weekend he was transferred to Berks County Youth Center in Leesport, Pennsylvania, 1,200 miles (1,920 km) from his lawyer, who was informed after the fact.

 [Email this article](#) - [View most sent articles](#)

Category > [Lifestyle](#)

Previous Story: [Payback Time for Overworked Nannies](#) (Reuters)

Next Story: [British Asians Shut Up Shop for Better Life](#) (Reuters)

[Home](#) [Top Stories](#) [World](#) [Business](#) [Sports](#) [Entertainment](#) [Science](#) [Automotive](#) [Health](#) [\]](#)

Copyright © 2002 Reuters Limited. All rights reserved. Republication or redissemination of the contents of this screen are prohibited without the written consent of Reuters Limited

Copyright © 2002 [Yahoo! Inc.](#) All rights reserved.

Somali boy must wait to seek asylum

BY MARIKA LYNCH

mlynch@herald.com

Jama Abdukhare Abshir watched his father die at 14, and searched for his mother and two younger brothers in African refugee camps for nearly a decade to no avail, he says.

In December, fearing he would be killed in his native Somalia, the now 17-year-old who goes by Abdul hopped a plane to Miami.

His fate in the United States, however, is unclear.

Tuesday, Abdul's attorneys lost a battle to apply for residency for his client as a juvenile. That means the boy will have to wait until he turns 18 on Saturday and ask for political asylum as an adult — a process that could take years while Abdul remains at the Krome Detention Center.

Attorneys, who had hoped for a court hearing, say the boy's case is typical of what happens to unaccompanied minors who arrive in the United States — unless their name is Elian Gonzalez.

"To deny permission to even have his day in court, just days before his 18th birthday and without any explanation, seems not only wrong but cruel," Cheryl Little, executive director of the Florida Immigrant Advocacy Center, wrote to immigration officials Tuesday.

"This child has been traumatized, and we're trying to avoid any further trauma if at all possible," she wrote. Instead it's "Happy birthday and welcome to the Krome detention center."

PROOF LACKING

To get special immigrant juvenile status, which allows a child to apply for permanent resident status, the child must prove he has been abused, neglected or abandoned by his parents. If that's established, the child is declared a ward of the state and goes into foster

care.

INS attorneys declined to comment on the case. But court papers suggest the reasons for their decision: Abdul has no proof of his travails.

The boy has no birth certificate and INS couldn't obtain a copy from Somalia, which is in the midst of a civil war. The boy said he lived in a refugee camp with his father, but the U.N. High Commission on Refugees has no record of it.

To make its ruling, the INS only has a three-page affidavit from Abdul's lawyers that tells this story:

Abdul was on a business trip with his father when war broke out in Somalia in 1990. Fearing it was too dangerous to return home to Mogadishu, they fled to a refugee camp on the Kenya border. The pair spent the next six years moving from camp to camp, between Somalia, Kenya and Ethiopia, unsuccessfully looking for the rest of the family. While moving, Abdul's father was attacked by bandits and shot to death.

'WORLD FELL APART'

"After my dad died, my world fell apart," Abdul wrote.

He worked washing dishes in a restaurant in Mogadishu until he scalded his arm. The burn became infected and he considered suicide. He later took a job cleaning trucks and lived inside one. The boy rarely disclosed that he belonged to the Modiban clan, a minority group, because he feared the reaction.

"There is so much hate and violence. I could never say I was from the Modiban clan," Abdul wrote. "I would have been killed."

Requiring documents such as a birth certificate from a boy under these circumstances is unreasonable, said Bernard Perlmutter, a University of Miami law professor working on the case.

Attorneys also are angered at what they feel is INS's "seemingly callous" manner in handling the case. When asked if the agency could make a decision before Abdul's 18th birthday, one immigration official allegedly told attorney Christina Kleiser that she should understand "what boy has the attention of the district director" — an apparent allusion to Elian Gonzalez.



Sun-Sentinel.com

Home News Sports Entertainment Classified Business

Shortcut to...

Go!

Weather

CURRENTLY

73°, Partly Cloudy,
Humidity 84%

TODAY'S FORECAST

81°, Partly Cloudy

TOMORROW

Partly Cloudy
High: 84°, Low: 69°

► [More weather](#)

► [Hurricane Central](#)

More News

► [South Florida](#)

► [Broward](#)

► [Palm Beach](#)

► [Miami-Dade](#)

► [Florida](#)

► [World/National](#)

► [Business/Technology](#)

Campaign 2000

► [On the campaign trail](#)

► [Scuttlebutt](#)

► [The candidates](#)

► [Local Politics/Nevins](#)

Today's News Poll

**A Delray
legislator
wants to get rid
of
daylight-saving
time. What are
your feelings
on DST?**

**[See the latest
story and talk
about it on our
message board.](#)**

○ I like

U.S. judge to hear case of Somalian 17-year-old seeking political asylum

By JODY A. BENJAMIN Sun-Sentinel

Web-posted: 11:50 p.m. Feb. 16, 2000

MIAMI -- A federal judge has agreed to hear the case of a 17-year-old Somalian boy who showed up at Miami International Airport last December without parents or identification papers.

Judge Alan Gold set a hearing for this afternoon on a lawsuit filed by the Florida Immigrant Advocacy Center on behalf of Abdul-Kheir Jama Abshir, who said the Somalian civil war destroyed his family. But Abshir has been unable to prove that to the satisfaction of immigration officials.

The lawsuit seeks to set aside a decision by the Immigration and Naturalization Service on Tuesday, denying Abshir the right to a hearing before a juvenile court judge.

"All we are asking is that he have his day in court," said Abshir's attorney, Cheryl Little. "We think the INS is applying the wrong standard of law here. They are seeking far too much proof than is necessary at this point." A Saturday deadline still looms large for Abshir. On Saturday, he turns 18 and becomes ineligible for a privileged status reserved for minors. As an adult, he can still apply for political asylum but lawyers say that could mean months in detention. They want him released into state foster care.

"He has been very traumatized," said Little. "He should not have to sit in



Webb Mortgage Depot



**The Key to
Your Degree**



shopping@
sun-sentinel.com

Pick a city and shop:
[Broward East](#)
[Fort Lauderdale](#)
[Lauderdale-by-the-Sea](#)
[Oakland Park](#)
[Wilton Manors](#)
[Broward Northeast](#)
[Deerfield Beach](#)
[Lighthouse Point](#)
[Pompano Beach](#)
[Broward Northwest](#)
[Coconut Creek](#)
[Coral Springs](#)
[Margate](#)
[North Lauderdale](#)
[Parkland](#)
[Tamarac](#)

☐ I like the extra daylight hours. (71%)
☐ I don't like it; it's pointless, and changing the clock is a pain. (26%)
☐ I don't care whether Florida has DST. (2%)
Total votes.
211
 Vote

error. He should not have to sit in detention."

Today's hearing marks the second time in recent months that an INS decision about an unaccompanied minor is challenged in federal court. On Tuesday, Judge William Hoeveler will hear arguments that the INS improperly ruled in the case of 6-year-old Elian Gonzalez.

Abshir says he has not seen his mother since 1990 because she went into hiding at the outbreak of civil war in Somalia. He lived several years in a Kenyan refugee camp with his father, until robbers there killed his father in 1996.

The boy said he returned to Somalia where he worked as a dishwasher several years. From Africa, he traveled to Holland and on Dec. 20, to Miami. It is unclear how Abshir was able to do so.

In court documents, the INS says it has been unable to verify Abshir's story. It contacted the U.S. Embassy in Nairobi, Kenya, and United Nations High Commissioner for Refugees but was unable to obtain Abshir's birth certificate or confirmation that he lived in a Kenyan refugee camp.

INS wants Abshir deported.

"Because of the uncertainty of the facts, (INS authorities) concluded they could not establish that it was not in the plaintiff's best interest to be returned to his country of last habitual residence, Kenya," INS lawyers wrote in their response to the lawsuit. Abshir is being held at the Boys Town Juvenile Detention Center in Miami.

Jody A. Benjamin can be reached at jbenjamin@sun-sentinel.com or 954-356-4530.

[Broward Southeast](#)
[Dania Beach](#)
[Hallandale](#)
[Hollywood](#)
[Pembroke Park](#)
[Broward Southwest](#)
[Cooper City](#)
[Davie](#)
[Miramar](#)
[Pembroke Pines](#)
[Weston](#)
[Broward West](#)
[Lauderdale Lakes](#)
[Lauderhill](#)
[Plantation](#)
[Sunrise](#)
[Palm Central](#)
[Boynton Beach](#)
[Greenacres](#)
[Lake Worth](#)
[Palm South](#)
[Boca Raton](#)
[Delray Beach](#)
[Reference Map](#)





Sun-Sentinel.com

[Questions or comments?](#) | [Paid archives](#) | [Message boards](#)
 Copyright 1999, Sun-Sentinel Co. & South Florida Interactive, Inc.



Sun-Sentinel.com

Home News Sports Entertainment Classified Business

Shortcut to...

GO!

Weather

CURRENTLY

73°, Partly Cloudy,
Humidity 84%

TODAY'S FORECAST

81°, Partly Cloudy

TOMORROW

Partly Cloudy
High: 84°, Low: 69°

► [More weather](#)

► [Hurricane Central](#)

More News

► [South Florida](#)

► [Broward](#)

► [Palm Beach](#)

► [Miami-Dade](#)

► [Florida](#)

► [World/National](#)

► [Business/Technology](#)

Campaign 2000

► [On the campaign trail](#)

► [Scuttlebutt](#)

► [The candidates](#)

► [Local Politics/Nevins](#)

Today's News Poll

**A Delray
legislator
wants to get rid
of
daylight-saving
time. What are
your feelings
on DST?**

**See the latest
story and talk
about it on our
message board.**

01 like

Somalian teen faces struggle to stay in U.S.

By JODY A. BENJAMIN Sun-Sentinel

Web-posted: 12:11 a.m. Feb. 16, 2000

The teenager arrived alone on a flight from Holland to Miami International Airport. He told immigration officers he had fled ethnic violence in his native Somalia so intense that it had separated and destroyed his family.

Now an 11th-hour legal battle has erupted over whether Abdul-Kheir Jama Abshir, 17, can stay. Lawyers for the Florida Immigrant Advocacy Center say he should be granted a special immigrant status available to some unaccompanied children fleeing dangerous conditions at home.

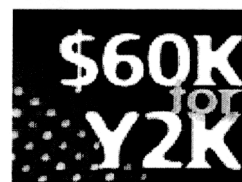
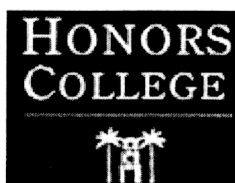
For Abshir, there is not a lot of time.

He turns 18 on Saturday and, in the eyes of the law, becomes a man no longer eligible for a privileged status reserved for minors.

Immigration officials can ask a state juvenile court judge to declare a minor a ward of the state. Such a finding would open the door to placement in foster care until age 21.

But on Tuesday, the Immigration and Naturalization Service turned down a lawyer's request that the agency ask the juvenile court to look into Abshir's case.

"There is insufficient evidence to establish eligibility," Jack Shackles wrote to Abshir's attorney, Christina Kleiser. "A full written decision specifying the basis for denial will be forthcoming within the next



shopping@
sun-sentinel.com

Pick a city and shop:

[Broward East](#)

[Fort Lauderdale](#)

[Lauderdale-by-the-Sea](#)

[Oakland Park](#)

[Wilton Manors](#)

[Broward Northeast](#)

[Deerfield Beach](#)

[Lighthouse Point](#)

[Pompano Beach](#)

[Broward Northwest](#)

[Coconut Creek](#)

[Coral Springs](#)

[Margate](#)

[North Lauderdale](#)

[Parkland](#)

[Tamarac](#)

☐ I like the extra daylight hours. (71%)
☐ I don't like it; it's pointless, and changing the clock is a pain. (26%)
☐ I don't care whether Florida has DST. (2%)

Total votes:

211

Vote

24 to 48 hours."

But if the Saturday deadline passes, lawyers say, Abshir will face a long and difficult bid for political asylum while being held in detention.

Last week, they filed a lawsuit in Miami federal court seeking to push the INS to quickly put Abshir's case before a juvenile court judge.

But on Tuesday, after learning the INS did not think Abshir's case has merit, U.S. District Judge Alan Gold canceled a hearing planned for this morning.

Gold gave lawyers until this afternoon to argue why he should reconsider.

Abshir's attorneys criticized the INS stance.

"We think there is no question that he qualifies for this relief and that he has a strong case," said attorney Cheryl Little of the Advocacy Center.

"We believe the INS is wrong. I don't believe they've looked at the facts of this case," Little said.

Abshir, who belongs to the minority Madiban clan, said he was separated from his mother and two brothers in 1990, at the start of the Somali civil war.

When the fighting began, he was traveling with his father on business outside the country's capital city, Mogadishu. It was too dangerous for the two to return to the capital.

"I was 8 years old at the time and my father had taken me along on one of his business trips. All I remember my father telling me was that it was too dangerous to travel back to Mogadishu," Abshir said in a court affidavit.

He never saw his mother or brothers again.

Instead, he and his father went to a refugee camp in neighboring Kenya, where the two later settled.

The father supported the family by selling clothes. In 1996, while the two were traveling in Kenya, the father was killed by robbers.

Orphaned at age 14, Abshir returned to

Broward Southeast
[Dania Beach](#)
[Hallandale](#)
[Hollywood](#)
[Pembroke Park](#)
 Broward Southwest
[Cooper City](#)
[Davie](#)
[Miramar](#)
[Pembroke Pines](#)
[Weston](#)
 Broward West
[Lauderdale Lakes](#)
[Lauderhill](#)
[Plantation](#)
[Sunrise](#)
 Palm Central
[Boynton Beach](#)
[Greenacres](#)
[Lake Worth](#)
 Palm South
[Boca Raton](#)
[Delray Beach](#)
[Reference Map](#)

Somalia.

"Life in Mogadishu was very, very hard. I lived in fear there," Abshir said in the affidavit. "Wherever you go, you are not sure if you are safe or not. The first question people ask is what clan you belong to. I knew that if I said I was from a different clan, I would be beaten up or killed. That is just the way it works."

It is unclear how Abshir got to Europe or how he traveled from there to Miami.

Most unaccompanied minors arriving in the United States quickly find themselves on a plane back home. Others spend bewildering weeks in jail without benefit of a lawyer.

The Advocacy Center learned of Abshir's case on Dec. 23, after a staffer stationed at the Krome Detention Center happened to notice it on a court docket.

"We only discovered this by chance," Little said.

"We've had to file a lawsuit just to get an incomplete response from the INS," she said.

Jody A. Benjamin can be reached at jbenjamin@sun-sentinel.com or 954-356-4530.

Sun-Sentinel.com
WORLD WIDE WEB SEARCH

GO!

TIPS

OPTIONS

Sun-Sentinel.com

[Questions or comments?](#) | [Paid archives](#) | [Message boards](#)
Copyright 1999, Sun-Sentinel Co. & South Florida Interactive, Inc.



The WNBA's new Miami SOL
Season Tickets from \$5 a Game
Call 786-777-4SOL





July 31, 2002

Commissioner James Ziglar
Immigration & Naturalization Service
US Department of Justice
425 I Street, NW, 7th Floor
Washington, DC 20536

Dear Commissioner Ziglar:

On behalf of the undersigned organizations, we write to express our deep concern about the treatment of Alfredo [REDACTED] (A [REDACTED]), an indigenous Guatemalan child in INS custody. Alfredo is a sixteen year old boy who suffered extreme abuse in the past and who fled Guatemala in fear of his life. An Immigration Judge found his testimony about his abuse completely credible. Moreover, an expert diagnosed him with Post Traumatic Stress Disorder as a result of the abuse he suffered.

INS has denied Alfredo release from custody, alleging that he is a flight risk. On March 7, 2002, however, a Federal Court Judge found that Alfredo poses no risk of flight. While the judge felt he himself could not order the INS to release Alfredo, he clearly stated that this would be in Alfredo's best interest and the appropriate course of action.

Detention

Alfredo has been in INS custody for over one year. On March 25, 2002 we wrote the Attorney General, raising concerns regarding Alfredo's treatment while in detention. Indeed, since November 2001, Alfredo has been transferred no less than nine times to detention facilities across the country, all of which have been entirely inappropriate for his needs and have isolated him from his attorney and interpreter. For some time Alfredo, who has no criminal history, was incarcerated at the Monroe county Jail in Key West, Florida which houses adult and juvenile criminal offenders. Upon entry and exit of the jail, Alfredo was shackled and handcuffed to a chain around his waist. Throughout the duration of his incarceration at the jail, Alfredo was not even provided with a pencil and paper, much less any educational activities.

Women's Commission for
Refugee Women and Children
122 East 42nd Street
New York, NY 10162-1128
tel. 212.551.3111 or 3088
fax. 212.551.3180

www.womenscommission.org
www.womenscommission.org

An independent organization formed
with the assistance of the International
Rescue Committee to advocate for the
solution of problems affecting refugee
women and children.

Liv Ullmann
Honorary Chair
Kathleen Newland
Chair

Beverly Bruce
Judy Mayotte
Catherine O'Neill
Chair Emerita

Board of Directors
Michelle Bassier
Khando T. Chazotsang
Roberta Cohen
Julia Akar Oduor
Dina Dublon
Lily Duke
Grace Dunbar
Lisa Frazzetta
Gail A. Furman
Janet Hanson
Barbara Johnson
Joan Kaplan
Jurate Kazickas
Joan Koenig
Elizabeth Ann Kovacs
Ria Kulenovic
Susan F. Martin
Mary Moglia
Kathleen Mowley
Regina Peruggi
Diana D. Pichonick
Patty Preston
Faye Richardson
Mary Anne Schwalbe
Pippa Scott
Joyce Sherman
Barbara Smith
Nikki Teresi
Carmen Valenzuela
Jacqueline Winston

Mary Blair
Executive Director
Ellen Jorgensen
Director of Administration
and Resource Management
Sandra Krause
Director, Reproductive Health Program
Jane Lowicki
Senior Coordinator, Children and
Adolescent Projects
Diana Quick
Director of Communications
Wendy Young
Director of Government Relations
and U.S. Programs

Commissioners of the Women's Commission for Refugee Women and Children

Sheppie Abramowitz, Susan S. Alberti, Nancy Aoussay, Nana Apeadu, Tizita Belachew, Joan Bingham, Vera Blinken, Natasha Bossier, Le Lieu Browne, Joan Casalia, Ellen Chester, Glenn Close, Judy Corman, Leni R. Darrow, Betsy DeVicenti, Eve Finer, Sandra Feldman, Elizabeth Ferris, Susan D. Ginkel, Anne Goldfeld, Elzbieta M. Gozdzik, Judith Hubbard, Lian, Susan Jonas, Sarah Komer, Jane Kronenberg, Anne Luzzatto, Mary B. Moran, Sarah E. Moten, Mary Mulvihill, Roseanne Murphy, Molly E. Myers, Karen Olness, Jane Olson, Julia Plotnick, Eden W. Ratsoon, Molly Razer, Nancy Rubin, Shannon Salinas, Jill Schuker, Gail Sheehy, Lorna Stevens, Rose Styron, Sandra Sennett Tully, Guylene L. Viald, Patricia Walker, Jo Ann Warhall, Melnick Wyler, Joan Hilmberg, Millic Hannon-Meyers



Women's Commission for
Refugee Women and Children
122 East 42nd Street
New York, NY 10168 -- 289
tel. 212.551.3111 or 3088
fax. 212.551.3180
e-mail: wwwc@intrescom.org
www.womenscommission.org

An independent organization formed
with the assistance of the International
Rescue Committee to advocate for the
solution of problems affecting refugee
women and children.

While in Miami for his appearances in federal court, Alfredo was twice detained in a Miami motel room. For more than a month, he was not allowed outside of his room at all, except when taken to court or for attorney visitation at Krome. He was often shackled and handcuffed when transported. Also, he could not receive visits at the motel and his only activity was watching television. In December FIAC attorneys were prohibited from giving Alfredo a jigsaw puzzle and art set to provide him with some alternative activities because these gifts were considered "contraband."

On March 7, 2002 Alfredo was once again transferred to a detention facility in Berks County, Pennsylvania, which is over 1200 miles from his attorney, the only interpreter in the country who understands him, and a community which -- in the Federal Court judge's opinion -- includes the people who most care about him. On July 12, 2002, a District Court Judge in Miami issued an order, informing INS that they had failed to respond to an amended complaint filed by Alfredo's attorneys seeking his release from detention, and giving them 10 days to respond. That case is pending as well.

Political Asylum

Alfredo applied for political asylum in November 2001. Although the Immigration Judge did not grant him asylum, he found Alfredo completely credible and concluded that he had been severely abused by his father, that his mother was incapable of caring for him and that street children in Guatemala, such as Alfredo, are typically denied protection by the Guatemalan government. In his decision, the Immigration Judge stated:

"[T]he Respondent has suffered severely at the hands of his father... and suffers today from that experience.... One time a table was pushed into his abdomen....

All his brothers, and sisters were beaten by his father. His mother also has problems with his father. They were beaten three times a week, with ropes, sticks, anything he had.... His father shoved a knee into his mother's stomach.... [Alfredo] left the country because he had no one, as his mother had what he calls a nervous breakdown. He talked to his mother on the phone, but she was not making sense. His mother just wanders around the streets, and has put herself in front of cars.... No child should suffer the beatings, and hardship that [Alfredo] has.... If this Court were deciding whether the respondent should be allowed to remain in the United States for humanitarian reasons, it would be a simple decision....

Respondent's attorney has submitted background information demonstrating that children are abused in Guatemala, and that the government is unable or unwilling to protect these children. The State Department confirms that abuse is a large problem.... Street children remain a big problem, and most of these are from abused families. The State Department says, "The



Women's Commission for
Refugee Women and Children
122 East 42nd Street
New York, NY 10168-1269
tel. 212.551.3111 or 3088
fax: 212.551.3180
e-mail: wcrwc@intrescom.org
www.womenscommission.org

An independent organization formed
with the assistance of the International
Rescue Committee to advocate for the
relief of refugees, affecting refugee
women and children.

Government and a number of NGO's operate youth centers, but funds devoted to them are not sufficient to alleviate the problem." (See attached decision of the Immigration Judge).

The Florida Immigrant Advocacy Center appealed the denial of asylum to the Board of Immigration Appeals (BIA) and submitted a brief in support of their appeal on July 10, 2002. On July 19, 2002 a single member of the BIA issued a summary affirmance of the Immigration Judge's decision. Alfredo's lawyers are appealing that summary decision and requesting that a three judge panel review the case.

We believe the Immigration Judge in assessing Alfredo's testimony erroneously treated Alfredo as if he were an adult, and that he misapplied the law. We also believe the BIA should not have issued a summary denial in Alfredo's case.

Special Immigrant Juvenile Status

In addition to applying for asylum on behalf of Alfredo, FIAC has pursued special immigrant juvenile status for him. However, the INS to date has refused to consent to allow Alfredo to appear before a juvenile court. As you know, if a juvenile judge finds that a child in INS custody is a dependent of the state court, and that the child has been abused, abandoned or neglected, he or she can rule that it is not in the child's best interest to be returned to his homeland.

Alfredo submitted his written request for consent on January 7, 2002 and was interviewed by the INS Miami District office regarding his request in February 2002. To date, INS has not issued a decision on this matter.

Alfredo presents an extremely compelling case for consent. On March 12, 2002, Patricia Mancha, an INS public affairs officer in Miami, told Alan Elsner, a reporter for Reuters, that INS "accept[s] that the father is an abuser and the mother is mentally ill...." Indeed, after listening to Alfredo's testimony at his asylum hearing, the INS trial attorney, Teresa Scala, felt compelled to inquire affirmatively if consent for juvenile court jurisdiction had been sought on his behalf.

While Alfredo has been in INS custody, his family situation has worsened. In addition to the initial evidence of the severe abuse, abandonment and neglect that Alfredo suffered in Guatemala, which we are submitting for your review, please also find enclosed a declaration from Felipe and Elena Cabrera, who are the parents of Sonia Cabrera, Alfredo's Mam (his first language) interpreter. The Cabrerias visited Alfredo's home in Los Duraznales, Guatemala. They found Alfredo's mother in a completely unstable mental state and noted with distress the neglect and abandonment of Alfredo's siblings. They were told by one of Alfredo's relatives that, "Pedro [Alfredo's father] drank a lot and spent most of his time hitting his wife and children."



Women's Commission for
Refugee Women and Children
122 East 42nd Street
New York, NY 10168-1289
tel. 212.551.3111 or 3088
fax 212.551.3160
e-mail: wcw@intres.com
www.womenscommission.org

An independent organization formed
with the assistance of the International
Rescue Committee to advocate for the
solution of problems affecting refugee
women and children.

Alfredo himself recently spoke with his family from the Berks County Youth Center. A neighbor told him his mother was unable to come to the phone to speak with her son because her mental state had severely worsened. Alfredo spoke instead with his younger sister who told him his mother "does not have a mind" now and that his siblings are unable to care for themselves and do not have enough to eat.

Given the severe abuse, abandonment and neglect Alfredo has suffered in Guatemala, as supported by the attached documentation, the Immigration Judge's finding of Alfredo as credible, and the INS' District office admission that his father is abusive and his mother is mentally ill, surely if there ever was a case for juvenile court jurisdiction, this is it.

Conclusion

At the National Immigration Forum Conference in DC in Washington DC, you voiced concern over the plight of children in INS custody and vowed that INS would do everything in its power to act in the children's best interest. In the spirit of that commitment, we urge you to grant a stay of deportation in Alfredo's case and grant consent for his obtaining juvenile court jurisdiction over dependency proceedings. Alfredo should also be released into foster care pending the outcome of these proceedings.

We believe that the treatment that unaccompanied children receive pending the outcome of their immigration proceedings has become a benchmark against which to measure the U.S. commitment to protecting the world's most vulnerable children. Alfredo came to our country expecting shelter from a type of abuse that no child should have to endure. We urge you to exercise your authority to ensure that he receives the care he deserves.

Thank you for your attention to this urgent matter.

Sincerely,

Mary F. Diaz
Executive Director

On behalf of:

Amnesty International
322 Eighth Avenue
New York, NY 10001



Amigos Center
3634 Central Avenue
Fort Myers, FL 33901

Florence Immigrant and Refugee Rights Project
300 South Main Street
Florence, AZ 85232

Florida Legal Services
3000 Biscayne Blvd., Suite 450
Miami, FL 33137

Florida Justice Institute
200 S. Biscayne Blvd., Suite 720
Miami, FL 33131

National Immigration Project of the National Lawyers Guild
14 Beacon Street, Suite 602
Boston, MA 02108

National Immigrant Rights Representation Association (NIIRA)
David Chapman, President & Executive Director
1201 11th Street S
Fargo, ND 5899

Northwest Immigrant Rights Project
P.O. Box 270
Granger, WA

Pennsylvania Immigration Resource Center
P.O. Box 3587
York, PA 17402

University of Miami School of Law's Children & Youth Law Clinic
1311 Miller Dr., Suite F305
Coral Gables, FL 33124

Susan G. Toler, Esq.
P.O. Box 4071
Philadelphia, PA 19118

Women's Commission for
Refugee Women and Children
122 East 42nd Street
New York, NY 10168-1229
tel: 212.551.3111 or 3088
fax: 212.551.3180
e-mail: wcrwc@intrescom.org
www.womenscommission.org

An independent organization formed
with the assistance of the International
Rescue Committee to advocate for the
solution of problems affecting refugee



Javier N. Maldonado
Lawyers' Committee for Civil Rights Under Law of Texas
2311 N. Flores
San Antonio, TX 78212

Richard Breitman
Breitman Immigration Law Firm
Offices in the INS Building
2901 Metro Dr. #501
Bloomington, MN 55425

Stephen M. Knight and Karen Musalo
Center for Gender & Refugee Studies
U.C. Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102-4978

Gregory Chen
Staff Attorney
Legal Services for Children
1254 Market Street, 3rd Floor
San Francisco, CA 94102

cc: Bob Graham, United States Senator, Florida
Bill Nelson, United States Senator, Florida
Diane Feinstein, United States Senator, California
Sam Brownback, United States Senator, Kansas
Edward Kennedy, United States Senator, Massachusetts

Women's Commission for
Refugee Women and Children
122 East 42nd Street
New York, NY 10168-1289
tel. 212.551.3111 or 3088
fax 212.551.3180
e-mail: wcrwc@intrescom.org
www.womenscommission.org

An independent organization formed
with the assistance of the International
Rescue Committee to advocate for the
solution of problems affecting refugee
women and children



U.S. Department of Justice
Immigration and Naturalization Service

HQRRT 30/2.3

Executive Associate

Street NW
Washington, DC

JUL 22 2002

Ms. Cheryl Little
Executive Director
Florida Immigrant Advocacy Center, Inc
3000 Biscayne Boulevard
Suite 400
Miami, Florida 33137

Dear Ms. Little

This is in response to your March 25, 2002, letter to Attorney General John Ashcroft regarding the detention and treatment of Alfredo [REDACTED]. Your letter was referred to the Immigration and Naturalization Service (INS). We apologize for the delay in responding.

We understand the concerns that have prompted you to write, specifically that you believe: Alfredo is being denied release from INS custody despite a Federal Court Judge's findings that he does not pose a flight risk; he has been linguistically isolated during his detention; he has been transferred repeatedly to different detention facilities around the United States; and he has been mistreated while in INS custody and at the Berks County Youth Center in Leesport, Pennsylvania.

Under the Immigration and Nationality Act, the INS is responsible for detaining unaccompanied juveniles who enter the United States illegally, go out of legal status, or commit a deportable offense. The INS also is responsible for ensuring a juvenile's timely appearance in immigration court. In addition to meeting the Government's legal obligations, as you noted in your letter, Commissioner James Ziglar and the INS are committed to the safety and welfare of unaccompanied juveniles. In the case of Alfredo, he continues to remain in INS custody while his appeal is pending because the Immigration Judge **did** determine Alfredo to be a flight risk. The Federal Court Judge to whom you referred has since closed this case, citing no jurisdiction over this matter.

You have noted an overall concern about the treatment and detention of Alfredo, however, we believe it important to note that he is not in a secure detention center, but what is known as a special INS "juvenile shelter care facility." This facility is designed to provide a safe and humane setting for unaccompanied minors in similar situations. We can assure you that he has adjusted well to his new environment. The Berks County Youth Center, which resembles a college dormitory, offers a number of on-site services such as schooling for children, preventative medical and dental examinations, English classes and life-skills classes. In addition, Alfredo is regularly visited by a licensed social worker who is helping to evaluate and care for his mental well-being.

Ms. Cheryl Little
Page 2


With respect to Alfredo's limited communication abilities, he has been able to communicate using his limited knowledge of Spanish. In addition, there is an on-site translation service and, if needed the facility relies on the translation services of the Language Services Associates.

We wish to dispel the claim that Alfredo has been transferred no less than eight times. In fact he has been transferred three times which include relocating from Boys Town in Miami to a hotel for temporary residence and, finally to Berks County Youth Center. Further with reference to the cited incident on January 21, 2002, Alfredo was punished for disruptive behavior. The INS maintains that in order to provide a safe and orderly living environment, the authorities at the Berks County must impose disciplinary sanctions on anyone whose behavior is not in compliance with the facility rules and procedures. Still, he only suffered loss of privileges for 1 day—nothing more.

We would like to assure you that every effort has been made by the INS to keep Alfredo in a safe environment while his appeal is pending. We remain committed to handling the juveniles within our care and custody in a compassionate and dignified manner, while recognizing their unique needs and vulnerability as juveniles.

We trust this information clarifies Alfredo's past and current situation

Sincerely,


for Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations



U.S. Department of Justice
Immigration and Naturalization Service

HQOJA 50/12

Office of Juvenile Affairs

425 I Street NW
Washington, DC 20536

Ms. Cheryl Little
Florida Immigrant Advocacy Center, Inc
3000 Biscayne Boulevard, Suite 400
Miami, FL 33137

Re: Alfredo [REDACTED] (A [REDACTED])

Dear Ms. Little:

The Immigration and Naturalization Service (INS) thanks you for your correspondence of March 25, 2002, regarding your above named client.

The INS conducted a thorough review of the proposals submitted by your office regarding the release of Mr. [REDACTED]. After conducting the review, it was determined that your client should remain in custody. Consequently, on or about February 25, 2002, a letter was sent to your office informing you of this decision and the basis for it.

Written and verbal testimony was provided in Federal Court concerning the appropriateness of your client's present placement at the Berks County Youth Center (BCYC) – a juvenile shelter care facility in Reading, PA.

BCYC is fully capable of addressing your client's medical, mental health, education and language needs. According to your client's teacher, he is highly functional in the Spanish language. Also, as you may be aware, BCYC employs staff-persons who speak several languages including, Spanish, Mandarin, French, Hindi, Arabic, Russian and Italian.

These staff, when not on duty, are available as needed. In the event that these individuals are unavailable, facility staff has unlimited access to Language Services Associates (a local agency under contract with the INS).

INS records further indicate that your client was transferred to Monroe County Juvenile Detention on 11-08-01 because he was deemed an escape risk by INS personnel as a result of information provided by staff at Boystown (a juvenile shelter care facility). On 11-22-01, he was transferred to a more appropriate facility, BCYC. Upon his arrival there, staff reported that he seemed anxious and confused regarding his transfer from Miami. This was deemed normal, in that most new arrivals exhibit similar behavior.

Ms. Chery Little
Page 2

As referenced in your letter; Mr. [REDACTED] was housed in a hotel for a period of time as a result of an injunction filed by your office in District Court (Southern Florida). Since it was deemed that Boystown was no longer appropriate for him, (flight risk) he could not be returned there. There are no other facilities under INS contract in the Miami area where Mr. [REDACTED] could have been placed. Toward the end of your client's stay in Miami, Mr. [REDACTED] spent his day hours at Boystown. In light of this adjustment, additional staff was briefly hired at Boystown to provide one-on-one supervision for Mr. [REDACTED] and reduce the risk of flight.

On January 21, 2002, Mr. [REDACTED] attempted to "round-house kick" another juvenile resident at the shelter. As a result of this incident, Mr. [REDACTED] was counseled by staff and his recreational privileges were suspended for the remainder of that shift, during which time he was to sit in a chair in the hallway (approximately 2.5 hours). Mr. [REDACTED] refused to comply with the punishment for his inappropriate behavior and became defiant with staff. He was again counseled, at which time he became aggressive toward staff. Consequently, Mr. [REDACTED] had to be restrained for a short period of time, using a technique approved by the Pennsylvania Department of Public Welfare called "non-threatening crisis intervention."

However, other than that episode, Mr. [REDACTED] has had no problems while at BCYC. He interacts well with staff and residents everyday and appears to have adjusted well to the BCYC program and facility regimen. Mr. [REDACTED] has not raised any concerns nor has the staff identified any concerns regarding mental health issues.

INS records indicate that on January 13, 2002, a psychological evaluation was performed by a Licensed Social Worker, paid for by your office. BCYC has not received a copy of this evaluation. However, based upon statements in your 03/25/02 letter referring to "post traumatic stress disorder syndrome," the INS is submitting a referral for a Licensed Social Worker to interview Mr. [REDACTED]. Based upon the outcome of that interview, additional action (if warranted) will be taken to further insure that Mr. [REDACTED]'s needs are being met.

Finally, INS records indicate that your client has not made any requests to contact you or your office since his return on March 11, 2002. The last incoming call received by Mr. [REDACTED] was from, Ms. Charu Newhouse, a representative from your office on April 2, 2002.

Based upon the information presented here; this office supports the current placement decision of the Immigration and Naturalization Service.

Sincerely


Steven J. Farquharson
Acting Director
Office of Juvenile Affairs

FLORIDA IMMIGRANT ADVOCACY CENTER, INC.

A non-profit organization dedicated to protecting and promoting
the basic human rights of immigrants of all nationalities in Florida



200 Biscayne Blvd,
Suite 400
Miami, Florida 33137
t: (305) 573-1106
x: (305) 576-6273

Board of Directors

President

Janet McAliley

Vice-President

Rev. Priscilla

Felisky Whitehead

Secretary

Barbara Ibarra

Treasurer

Antonio Prado

Marlene Bastien, MSW

Tanya Dawkins

Pedro Freyre, Esq.

Judy Gilbert-Gould

Carl E. Goldfarb, Esq.

Carlos J. Martinez, Esq.

Alan I. Mishael, Esq.

Gepsie Morisset Metellus

Bernard P. Perlmutter, Esq.

Lida Rodriguez-Taseff, Esq.

Kathie S. Sigler, EdD

Holly Skolnick, Esq.

Rev. Frank Smith

Franklin Tse, PE

Peter Upton, Esq.

Raul Valdes-Fauli

Bishop Thomas Wenski

Founding President

Raquel Matas, Esq.

Advisory Board Members

Deborah Anker, Esq.

Pat Blum, Esq.

Edgar Cahn, Esq.

Jonathan Demme

John Due, Esq.

Bill Frelick

Niels Frenzen, Esq.

Arthur Helton, Esq.

Ira Kurzban, Esq.

Dr. Rudy Moise

Bishop John J. Nevins, DD

Eduardo Padron, PhD

Michael Ratner, Esq.

James Silk, Esq.

Msgr. Bryan O. Walsh

Director

Cheryl Little, Esq.

March 25, 2002

John Ashcroft
US Attorney General
US Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Re: Alfredo [REDACTED]

Dear Attorney General Ashcroft:

On behalf of the undersigned organizations, we write to express our deep concern about the treatment and continued detention of Alfredo [REDACTED] (A [REDACTED]), an indigenous Guatemalan boy in INS custody, who is represented by the Florida Immigrant Advocacy Center (FIAC), Florida Legal Services, and Florida Justice Institute. INS has denied Alfredo release from custody, alleging that he is a flight risk. On March 7, 2002, however, a Federal Court Judge found that Alfredo poses no risk of flight. Moreover, while the judge felt he himself could not order the INS to release Alfredo, he clearly stated that this would be in Alfredo's best interest and the appropriate course of action.

Alfredo is an indigenous child with an extremely abusive past who fled Guatemala in fear of his life. An Immigration Judge found his testimony about his abuse completely credible. Moreover, an expert diagnosed him with Post Traumatic Stress Disorder as a result of the abuse he suffered. The expert also noted that his condition has deteriorated severely due to the conditions of his detention.

Alfredo speaks a rare dialect of Mam, which is an indigenous language, rendering him linguistically isolated during his detention. Like many indigenous Guatemalans from rural areas, Alfredo did not learn Spanish until he came to the United States. Although his Spanish has improved in the more than eight months he has spent in INS custody, he is not proficient in Spanish. Yet, none of Alfredo's INS custodians have ever communicated with him in Mam. The only person in the country who has been able to effectively interpret for him, Sonia Cabrera Lopez, has also offered to sponsor him. Ms. Cabrera coordinates services for Mayan children in the Palm Beach County school district.

Since November 2001, Alfredo has been transferred no less than eight times to detention facilities across the country, all of which have been entirely inappropriate for his needs and have isolated him from his attorney and interpreter. For some

time, Alfredo, who has no criminal history, was incarcerated at the Monroe County Jail which houses adult and juvenile criminal offenders. The Sheriff of that facility advised INS that the jail's contract with INS did not authorize him to jail an innocent minor in INS custody. Upon entry and exit of the jail, Alfredo was shackled and handcuffed to a chain around his waist. He was unable to effectively communicate his needs at the jail and hence, in the first few days he was there, he did not shower, he did not go outside, he did not use a telephone and he was completely isolated. Throughout the duration of his incarceration at the jail, Alfredo was not even provided with a pencil and paper, much less any educational activities.

While in Miami for his appearances in federal court, Alfredo was twice detained in a Miami motel room. For more than a month, he was not allowed outside of his room at all, except when taken to court or for attorney visitation at Krome. He was often shackled and handcuffed when transported. Not until persons from the national media inquired about Alfredo last week was he provided any educational services, a simple change of clothing or even paper and pencil. Also, he could not receive visits at the motel and his only activity was watching television. In December FIAC attorneys were prohibited from giving Alfredo a jigsaw puzzle and art set to provide him with some alternative activities because these gifts were considered "contraband".

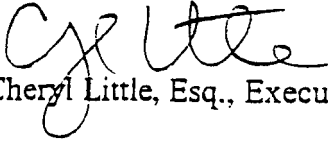
On March 7, 2002 Alfredo was taken away by U.S. Marshals, weeping and in shackles and handcuffs, following his federal court hearing in Miami. He has once again been transferred to a detention facility in Berks County, Pennsylvania, which is over 1200 miles from his attorney, the only interpreter in the country who understands him, and a community which -- in the Federal Court judge's opinion -- includes the people who most care about him. We remain extremely concerned about Alfredo's placement there not only because of the distance he is from his support network in South Florida, but also due to his previous treatment in Berks. For example, while visiting Alfredo in Pennsylvania on January 21, 2001 a member of FIAC's staff witnessed Alfredo being "restrained" and told he must sit on a chair in the hallway for three days, during the day. This was punishment for engaging in harmless, typical adolescent behavior. Moreover, no one at the Pennsylvania detention facility communicated with Alfredo in his native language and he was not provided any counseling or treatment despite his suffering from Post Traumatic Stress Disorder. In Pennsylvania, Alfredo's condition only worsened.

At the National Immigration Forum Conference last month in DC, INS Commissioner Ziglar voiced concern over the plight of children in INS custody and vowed that INS would do everything in its power to act in the children's best interest. We applaud the INS for that and implore you to do what the federal court judge himself thought the best course of action -- release Alfredo from INS custody, and prevent any further deterioration in his well-being. Attached is the release request FIAC made on Alfredo's behalf on February 11, 2002.

Thank you for your attention to this urgent matter.

Page 3

Sincerely, .



Cheryl Little, Esq., Executive Director, on behalf of:

Amigos Center
3634 Central Avenue
Fort Myers, FL 33901

Florence Immigrant and Refugee Rights Project
300 South Main Street
Florence, AZ 85232

Florida Legal Services
3000 Biscayne Blvd
Miami, FL 33137

Florida Justice Institute
200 S. Biscayne Blvd., Suite 720
Miami, FL 33131

Immigration and Refugee Services of America, Washington, DC
1717 Massachusetts Ave. #200
Washington, DC 20036

Lutheran Immigration and Refugee Service
700 Light Street
Baltimore, MD 21230

Lutheran Children and Family Service of Eastern Pennsylvania
5902 North 5th Street
Philadelphia, PA 19120

National Immigration Project of the National Lawyers Guild
14 Beacon Street
Suite 602
Boston, MA 02108

Northwest Immigrant Rights Project
PO Box 270
Granger, WA 98932

Page 4

Pennsylvania Immigration Resource Center
P.O. Box 3587
York, PA 17402
Southern Poverty Law Center
P.O. Box 2087
Montgomery, AL 36102

University of Miami School of Law's Children &
Youth Law Clinic
1311 Miller Dr., Suite F305
Coral Gables, FL 33124

University Committee on Human Rights Studies
Harvard University
218 Eliot
79, John F. Kennedy St.
Cambridge MA 02138
Washington Alliance for Immigrant & Refugee Justice
303 East "D" Street, #2B
Yakima WA 98901

Womens Commission for Refugee Women and Children
122 East 42nd Street
New York, NY 10168-1289

cc: James Ziglar, INS Commissioner
Bob Graham, United States Senator, Florida
Diane Feinstein, United States Senator, California
Sam Brownback, United States Senator, Kansas
Edward Kennedy, United States Senator, Massachusetts



South Florida Chapter
AMERICAN IMMIGRATION LAWYERS ASSOCIATION

OFFICERS

PRESIDENT

Mary E. Kramer
168 S.E. 1st Street, Suite 802
Miami, Florida 33131
(305) 374-2300
Fax: (305) 374-3748
e-mail: maryekramer@cs.com

PRESIDENT ELECT

Tim Murphy
201 S. Biscayne Blvd., Suite 1600
Miami, Florida 33131
(305) 379-9137
Fax: (305) 381-9982
e-mail: tmurphy@shutts-law.com

FIRST VICE PRESIDENT

Maite Hoyos
1101 Brickell Avenue, Suite 704
Miami, Florida 33132
(305) 371-2132
Fax: (305) 539-0390
e-mail: maitehoyos3@yahoo.com

SECOND VICE PRESIDENT

Antonia Canero-Davies
1200 Brickell Avenue, Suite 1250
Miami, Florida 33131
(305) 579-9218
Fax: (305) 579-9219
e-mail: antoniatic@cs.com

SECRETARY

Jeffrey A. Devore
1555 Palm Beach Lakes Blvd., Suite 1501
West Palm Beach, Florida 33401
(561) 478-5353
Fax: (561) 478-2144
e-mail: jdevore@visabank.com

TREASURER

Jeffrey Bernstein
100 N. Biscayne Blvd., Suite 2608
Miami, Florida 33132
(305) 371-4555
Fax: (305) 374-1789
e-mail: jbmiamilaw@aol.com

BOARD OF DIRECTORS

Mario M. Lovo
Roger Bernstein
Jonathan P. Rose
Lourdes Martinez Esquivel
Maria Dominguez

FORMER PRESIDENTS

Maria I. Casablanca
Michael D. Ray
Maya Chatterjee
Luis A. Cordero
Elaine F. Weiss
Tammy Fox-Isicoff
Mazen M. Sukkar
Larry S. Rifkin
Eugenio Hernandez
Sarah L. Tobocman
Barbara Warren
Joel Stewart
Michael Bander
David S. Berger
Michael Shane
Magua Montiel Davis
Phillip M. Zyne
Stephen E. Mander
Edward R. Shohat
Brian R. Hersh
Ira Kurzman
Michael Weiss
Donald Bierman
Oscar White
Neal Sonnet
Anastasios Notopoulos

FOUNDER

Charles B. Breslow
(1903-1978)

February 5, 2002

Hon. Michael J. Creppy
Office of the Chief Immigration Judge
Executive Office for Immigration Review
United States Department of Justice
5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

RE: Unaccompanied Minors in Removal Proceedings at the Krome Service Processing Center

Dear Chief Immigration Judge Creppy:

Thank you for your continued support of the efforts to help ensure quality legal representation for children in INS custody. As you may be aware, the Florida Immigrant Advocacy Center (FIAC) has been providing *pro bono* representation to unaccompanied minors detained in Miami since July 1999 and currently we represent all minors detained in Miami who cannot afford private counsel. FIAC and the South Florida Chapter of the American Immigration Lawyers Association (AILA) were awarded the American Bar Association grant to ensure that *pro bono* attorneys are well trained and support this effort.

This letter is to express our concern about the present conditions for minors who attend removal proceedings at the Krome Service Processing Center (Krome) and to request that a meeting be convened to discuss what changes could be made. As outlined below, we request that minors who are detained in Miami not be required to attend court proceedings at Krome and that a judge with a special interest in minors or specific training in handling these cases be assigned to adjudicate the minors' cases.

Currently, the minors are transported to Krome for a special juvenile Master Calendar on Thursday mornings by a representative from the Catholic Charities Unaccompanied Minors Program (Boystown) and are transported to Krome for their Individual Hearings by INS Officers. The immigration court environment at Krome is incredibly intimidating and harsh for minors. For example, during the Master Calendar Hearing, minors have no place to sit and often are forced to sit outside in the heat for up to three hours waiting for the docket to be completed. Moreover, target practice is generally occurring while immigration court is in session. The overwhelmingly loud sound of the firing range creates an incredibly intimidating environment for the minors. Indeed, from Judge Foster's courtroom, one can clearly hear the rat-a-tat-tat of shots being fired from the shooting range. After Individual Hearings, the minor is often sitting in this environment for hours waiting to be taken back to Boystown.

We have no complaint against the Judge currently assigned to juvenile cases, and in general admire him as an outstanding Immigration Judge. In addition, while the immigration judges make extraordinary efforts to ensure the minors have legal representation, we believe that the judges at Krome would agree that the cases would be better handled by a judge with more specialized training on child-interviewing techniques, an understanding of child psychology, and a background in other issues related to the special needs of children.

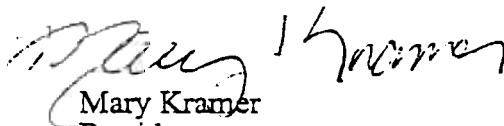
Given these issues, we would like to convene a meeting to discuss changing the way minors' removal proceedings are organized and we suggest the following changes:

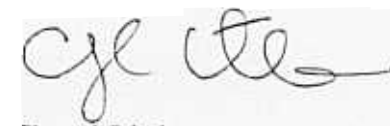
- 1) A judge be assigned who is trained or has a special interest in working with children;
- 2) That Master Calendar and Individual Hearings be held at the court located at 155 S. Miami Ave. (Miami Court) or at the Unaccompanied Minors facility.

These accommodations have been set-up in other parts of the country such as York, Pennsylvania and have proven to be models for adjudicating children's claims.

FLAC and AILA are dedicated to ensuring that every minor is effectively represented. We thank you again for your support of our efforts and your attention to these important issues and we look forward to talking to you at your earliest convenience so that together, we can ensure that the basic human rights of immigrant children in INS custody are protected.

Sincerely,


Mary Kramer
President
AILA S. Florida Chapter


Cheryl Little
Executive Director
Florida Immigrant Advocacy Center

cc: Immigration Judge Padgett
Steve Lang, EOIR
Chris Nugent, ABA



South Florida Chapter
AMERICAN IMMIGRATION LAWYERS ASSOCIATION



U. S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2545

Falls Church, Virginia 22041

March 12, 2002

Mary Kramer, President
South Florida Chapter
American Immigration Lawyers Association
168 S.E. 1st Street, Suite 802
Miami, Florida 33131

Cheryl Little, Executive Director
Florida Immigrant Advocacy Center, Inc
3000 Biscayne Blvd., Suite 400
Miami, Florida 33137

Dear: Ms. Kramer and Ms. Little.

Thank you for your letter of February 5, 2002, concerning hearings for minors in South Florida. Chief Immigration Judge Michael Creppy has forwarded your letter to me for response.

The Executive Office for Immigration Review very much appreciates the efforts that your organizations make on behalf of unaccompanied minors in Immigration Court proceedings. I was very glad to hear that your organizations had been awarded funds to continue this good work.

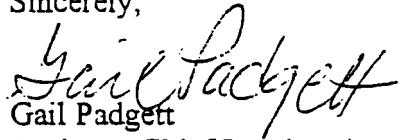
Your suggestions for how minors are taken through the Immigration Court process at Krome are under consideration. You have made some very good points about the discomfort and noise they may encounter at the Krome facility. The Court Administrators for the Krome court and the Miami Court (at 155 S. Miami Avenue) and I are discussing different alternatives, including the ones suggested by you, for proceeding with cases involving detained minors. As you can imagine, a change in this process will involve a great deal of coordination between the courts, the INS, and officials at Boystown responsible for implementing the government contract for detention of minors. Before convening a meeting with your organizations, we will need to explore a variety of possibilities for change and assess their feasibility.

As to the judges that will be assigned to these cases, we must reserve the right to assign any judge. We make no distinctions between judges as to their background and abilities. Every one has been trained and is cable of, and expected to, make fair and considered judgments about the parties before them, no matter the age or circumstances of the parties.

I look forward to hearing from you further on this and would like to meet with you the next time I am in Miami to update you on the changes we may make.

Thanks as always for your special interest in the unaccompanied minors in immigration proceedings. They are fortunate to have such willing and capable assistance.

Sincerely,

A handwritten signature in cursive script that reads "Gail Padgett". The signature is written in black ink and is positioned above the printed name.

Gail Padgett

Assistant Chief Immigration Judge



U.S. Department of Justice
Immigration and Naturalization Service

HQOPS 50/2.4

425 I Street NW
Washington, DC 20536

NY

Cheryl Little
Executive Director
Florida Immigration Advocacy Center, Inc.
3000 Biscayne Blvd., Suite 400
Miami, FL 33137

Dear Ms. Little:

Reference is made to your letter dated April 4, regarding your concerns of the treatment of juveniles detained by the Immigration and Naturalization Service (INS) in Miami, Florida. Specifically, you request the return of the two unaccompanied juveniles from the Saura Center Shelter-Care Program in Chicago, the reversal of the Miami District Director's decision not to release a Nigerian child from INS custody, and the removal of the Miami District Juvenile Coordinator.

The INS previously received a letter from your office, dated March 20, addressing the issue of the Boystown transfer. The Miami District responded by letter on April 5. As you are likely in receipt of that letter now, we will not address all the specific issues surrounding the transfer in this correspondence. Please recognize that such transfers expend considerable INS resources and are not the primary remedy sought by INS managers to alleviate population pressures related to immigration influxes. Rather, this transfer of juveniles from Boystown was viewed as the best available option to an emergent operational need.

Whenever it is necessary to transfer juveniles between INS regions, the transfers are generally requested by the District Juvenile Coordinator and require approval by both the sending Regional Juvenile Coordinator and the receiving Regional Juvenile Coordinator. In this case the National Juvenile Coordinator was also involved in the decision. Under INS policies, a District Juvenile Coordinator may not effect such transfers alone.

With respect to other issues raised in your most recent letter, the *Flores v. Reno* Settlement Agreement sets out nationwide policy for the detention, release, and treatment of juveniles in INS custody. Under the *Flores Agreement*, INS has a general policy favoring release, provided that the proposed sponsor is able to demonstrate that no harm, neglect, or failure to present the juvenile before the INS or the immigration court will occur.

The INS and the *Flores Agreement* recognize the particular vulnerability of juveniles. The INS has an obligation to ensure that juveniles are only released to a safe home environment. The *Flores Agreement* discusses the requirements for positive suitability assessments prior to release of minors to ensure such a safe home environment. Suitability assessments may include investigation of the living conditions in which the minor would be placed and the standard of care he/she would receive, background checks, verification of identity, employment of the individuals offering support, interviews of members of the household, and a home visit. In essence, prior to release, there must be a finding that the individual sponsoring the minor is capable and willing to provide safe and sufficient care for the juvenile's well being.


The district director has discretion regarding the custody and release of juveniles and may re-determine terms and conditions of bond, orders of recognizance and supervision, and conditions of parole. Discussed in your letter is a situation involving a mother and two children. These juveniles were not released, as a qualified sponsor could not be found.

Information obtained in the assessment of the mother's ability to care for her children revealed an arrest and deferred judgement for mingling, a violation often associated with prostitution. Based on this new information, the decision to arrest and detain the mother was authorized by Miami District management. Section 236 of the Immigration and Nationality Act (INA) provides for discretionary re-arrest and detention of aliens. An alien may, at any time before an order under INA § 240 becomes final, request amelioration of the conditions under which he/she may be released before an immigration judge. If you believe the mother should be released, a bond hearing may be appropriate.

Your letter also discusses a case involving an eight year-old child from Nigeria. As previously discussed, INS must find that the individual sponsoring the minor is capable and willing to care for the juvenile's well being prior to release. An assessment of the proposed sponsor failed to meet these requirements.

The INS takes reports of employee misconduct seriously. The allegations contained in your letter were referred directly to the appropriate authority.

Sincerely,



Anthony S. Tangemar
Deputy Executive Associate Commissioner
Office of Detention and Removal



U.S. Department of Justice
Immigration and Naturalization Service

KRO 50/2.4-C

Krome Service Processing Center
18201 SW 12th Street
Miami, FL 33194

April 5, 2001

Christina Kleiser
3000 Biscayne Blvd.
Suite 400
Miami, FL 33138

Dear Ms. Kleiser,

Reference is made to your inquiry dated March 20th, 2001, regarding the cases of [REDACTED], [REDACTED] and [REDACTED]. Service file numbers [REDACTED] and [REDACTED], respectively. Specifically, you are requesting that the Immigration and Naturalization Service (Service) return the minors to Miami.

Each of the minors to whom you referenced in your letter have been denied any relief by the Immigration Judge and have been ordered removed from the United States. Each has reserved the right to appeal the Immigration Judge's decision. The Board of Immigration Appeals reports that both appeals have been received and are currently pending adjudication.

Generally, aliens and their attorneys who have filed appeals that are pending with the Board will not be required to appear or make oral arguments. 8 C.F.R. § 3.1(e). Instead, the Board will rely upon the Record of Proceeding. As the specific location within the United States of counsel or alien does not appear to impact on adjudication of appeal, a claim of adverse effect on immigration proceedings appears without merit.

Further, please recognize that Congress provided the Service the authority, under INA § 241(g)(1), to detain aliens at locations it finds appropriate. With respect to aliens classified as minors, the manner and conditions of their detention is governed by an agreement reached in a class action lawsuit filed against the Service in 1985, *Jenny Lisette Flores, et al. v. Janet Reno* (Flores Agreement). This agreement sets out nationwide policy for the detention, release, and treatment of juveniles in INS custody. Both the Flores Agreement and 8 C.F.R. § 236.3(c) recognize and provide for the Service to transfer such aliens for operational need.

The movement to which you object was required due to an influx of political asylum seekers of various ages and gender. This influx has quickly increased detained population levels, requiring transfers of certain aliens in order to maintain a safe secure environment. While the Service continually makes efforts to increase both the quality and quantity of detention resources, please recognize it is challenging to manage these resources during such influxes.

The operational issues surrounding the transfer of minors from Miami were carefully considered and designed to minimize any potential adverse impact on the aliens. Currently there exists no compelling reason to disturb our decision.

Thank you for the opportunity to assist you. Should you or your staff require further information concerning this or any other matter please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Webster", with a long horizontal line extending to the right.

Michael L. Webster
Officer in Charge, acting

cc: subj.file

FLORIDA IMMIGRANT ADVOCACY CENTER, INC.

A NON-PROFIT ORGANIZATION DEDICATED TO PROTECTING AND PROMOTING
THE BASIC HUMAN RIGHTS OF IMMIGRANTS OF ALL NATIONALITIES.



000 BISCAYNE BLVD.
SUITE 400
MIAMI, FLORIDA 33137
TEL: (305) 573-1106
FAX: (305) 576-6273

Officers:

President

Janet McAliley

Vice-President

Rev. Priscilla

Felisky Whitehead

Secretary

Rev. Frank Smith

Treasurer

Antonio Prado

Directors:

Marleine Bastien, MSW

Carolina Calderin

Judy Gilbert-Gould

Carl E. Goldfarb, Esq.

Barbara Ibarra

Rabbi Jeffrey Kahn

Carlos J. Martinez, Esq.

Raquel Matas, Esq.

Alan I. Mishael, Esq.

Gepsie Morrisset-Metellus

Emard P. Perlmutter, Esq.

Kathie S. Sigler, EdD

Holly Skolnick, Esq.

Franklin Tse, PE

Peter Upton, Esq.

Raul Valdes-Fauli

Bishop Thomas Wenski

Advisory Board Members

Deborah Anker, Esq.

Patti Blum, Esq.

Edgar Cahn, Esq.

Jonathan Denime

John Due, Esq.

Bill Frelick

Niels Frenzen, Esq.

Arthur Helton, Esq.

Ira Kurzban, Esq.

Dr. Rudy Moise

Bishop John J. Nevins, DD

Eduardo Padron, PhD

Michael Ratner, Esq.

James Silk, Esq.

Msgr. Bryan O. Walsh

Executive Director

Cheryl Little, Esq.

VIA FACSIMILE: 202-353-9435

April 4, 2001

Anthony Tangeman
United States Department of Justice
801 I Street, NW
Washington, DC 20536

**RE: Concerns regarding INS treatment of juveniles detained by
the INS in Miami, FL**

Dear Mr. Tangeman:

Our office has been providing *pro bono* representation to unaccompanied minors detained at Boystown in Miami since July 1999 and presently we represent all minors detained in Miami who cannot afford private counsel. We also provide legal rights workshops at Boystown twice monthly.

This letter is to express our deep concern regarding the treatment of detained unaccompanied minors by INS officers in Miami, Florida. The most important of these concerns are outlined below.

TRANSFER OF MINORS IN CUSTODY

Three of FIAC's minor clients were transferred to Chicago about a month ago. On March 8, 2001, at about 4:00 a.m., these children were told they had half an hour to pack their things, and that they were being transferred to an INS facility in Chicago, Illinois.

Two of them had been FIAC's clients for several months. Indeed, we had represented one of these children for about one year and the other for about eight months. We filed G-28s, EOIR-28s and EOIR-27s in both cases. These cases are ongoing and require a considerable amount of in-person preparation. This work cannot easily be taken over by an attorney in Chicago, nor can it be completed by our office over the phone.

On March 9, our Boystown attorney was told by Deportation Officer [REDACTED] that the reason for the children's sudden transfer was due to a lack of space at Boystown. However, our attorney was at Boystown on March 14 and of the thirty-two beds there, only nineteen were occupied. When our attorney returned to Boystown on March 28, there were beds available at that time as well.

To date, our requests for the childrens' return to Miami have fallen on deaf ears. One of these children asked our attorney to pick up the belongings he was forced to leave behind and hold on to them in the event he is brought back to Miami. On March 16, we were told by the staff at Boystown that they were ordered to ship our client's things "immediately" to Chicago and that they were not to honor our attorney's request. [REDACTED] told FIAC attorney Chris Kleiser that she should be counseling this child to withdraw his appeal.

I hope you agree with us that it is not in the best interest of children in INS custody to be transferred away from their attorneys, teachers, counselors and others with whom they have caring, trusting relationships during this traumatic time in their lives. Moreover, our clients are effectively being denied access to counsel if they remain in Chicago, IL.

MISLEADING CHILDREN AND THEIR FAMILIES

Our office is deeply concerned that INS officials in Miami are misleading the families of the unaccompanied children as well as the children themselves regarding the children's release from Boystown. In one recent case, the INS spent two months investigating the mother of two girls in custody, a ten and four year old. The children's step-father is a U.S. lawful permanent resident and the mother has a visa petition pending. Deportation Officer [REDACTED] told the ten year old minor and the mother that he would make his decision whether to release the girls on Monday, March 19. [REDACTED] then went to the mother's home and told her that she only had to sign a few more papers at the Krome Detention Center in order to finish the paperwork for her daughters' release. He escorted the mother to Krome where, rather than following up on his promise to release the two girls, he proceeded to process the mother into detention at the Turner Guilford Knight (TGK) facility for female INS detainees. Several weeks prior, [REDACTED] had arrested the mother, released her on her own recognizance and initiated removal proceedings against her. On Monday, March 19, [REDACTED] apprehended her again, decided to hold her without bond, and re-issued a second Notice to Appear. She is currently in detention at TGK.

INS Officer [REDACTED] has been unwilling to release minors to anyone but the parent, even if that parent cannot be located and other key family relatives are eager to take care of the child. As a result, children have remained in INS detention for prolonged periods of time. For example, one of our clients, an eight year old Nigerian girl whose father in Nigeria no longer wants her and whose mother cannot be found, has been at Boystown for eleven months. (INS believes the mother is in the United States). Our office requested the District Director's consent for juvenile court jurisdiction in this case in order for child welfare experts to decide what is in the best interest of this minor. The District Director denied our request. Mr. [REDACTED] recently told our attorney that he would suggest to his regional supervisor that this girl be released to the maternal aunt who has been anxious to take this child in ever since her arrival. In the meantime, this eight year old is quickly approaching one full year in INS custody.

The psychological effects of long-term detention in this case are clearly evident. Our Nigerian client was recently examined by a child welfare expert who determined that she has apparently

lost her ability to speak her native language (African Yoruban) after almost one year in INS detention. Additionally, she seems extremely anxious and keeps telling us she wants to be released "today." Other children who have been at Boystown have suffered in much the same way.

Deportation Officer In Charge of Minors at Boystown

We believe that INS Officer [REDACTED] has on numerous occasions failed to act in the best interests of the children in his care. In addition to behavior such as that described above, the children tell us that [REDACTED] sometimes asks them to sign documents they don't understand and has treated them rudely. His conduct in court has also seemed inappropriate. See attached affidavit of Jack Wallace.

Unfortunately, it appears that Mr. [REDACTED] may be taking his frustration at FIAC out on the children at Boystown. Mr. [REDACTED] is aware that FIAC attorneys have worked to expose corruption at Krome, including sexual harassment and sexual abuse of the detainees, and he has threatened some of our clients who have claimed that [REDACTED] himself is guilty of sexually inappropriate conduct. (We told INS officials at both Krome and in the Miami District Office this several months ago). Indeed, the mother of the two girls referred to earlier in this letter was wrongly accused by [REDACTED] of being a prostitute and told she was a member of "one of the oldest professions belonging to women." Additionally, she claims that when taking her fingerprints, [REDACTED] pressed his body up against hers for what seemed an interminable length of time.

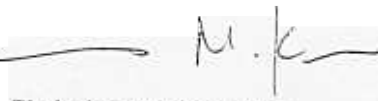
Based on the above, we request the immediate return of the two unaccompanied children who were wrongfully transferred to Chicago. We also request that your office reverse the District Director's decision in our Nigerian client's case and allow the juvenile court to review this case or allow her immediate release to her maternal aunt. Finally, we urge you to immediately remove Mr. [REDACTED] from his position as the Juvenile Coordinator.

We look forward to meeting with you at your earliest convenience regarding these and other very serious matters.

Sincerely,



Cheryl Little, Esq.
Executive Director



Christina Kleiser, Esq.
FIAC Attorney

*Florida Immigrant Advocacy Center, Inc.
3000 Biscayne Boulevard, Suite 400
Miami, Florida 33137*

♦ tel: (305) 573-1106 ♦ fax: (305) 576-6273

MEMORANDUM

RE: MINORS IN INS DETENTION IN SOUTH FLORIDA

DATE: DECEMBER 14, 2000

- *Minors have no independent person to talk to upon arrival in detention who can speak to them about their concerns which causes the minor extreme anxiety and distress.*
 - Often minors at Boystown are given advice about their cases which is inaccurate and emotionally upsetting. Undocumented parents are also given inaccurate advice about what will happen if they come forward which causes the child even more confusion.
- *Minors are sometimes held at motels in the company of women and children and are guarded by INS officers.*
 - The circumstances under which this occurs is unknown.
 - Family members trying to find their children have difficulty doing so.
 - Children have complained of guards making fun of them. In one case a minor spoke of being held for ten days in a hotel while guards continued to call him names which were bad to him.
 - The minors kept in hotels have no access to an advocate.
- *Minors who arrive with parents are sometimes separated from them causing great anguish to the child.*
 - In one case a mother was separated from her two sons for about nine months while the mother's asylum case was pending. The mother was detained in New York and the boys in Miami. They were only released after the mother was granted asylum.

Minors who speak languages other than Spanish, Haitian Creole or Mandarin have no access to someone in their language to help them communicate.
- *Minors tend to languish in detention.*
 - Those who have no clear family are not aided in the release process
 - Those who are abandoned/abused/neglected are required to request the District Director's consent before obtaining juvenile court jurisdiction and the District Director has taken up to five months to respond (one case filed in July is still pending before the District Director). Immigration Judges and Assistant District Counsel never take any steps to initiate this process.
 - The process for evaluating whether a Chinese minor should be released is lengthy (some have been pending six months)
- *Minors who the Deportation Officer suspects have an undocumented parent in the United States are rarely released unless the parent comes forward.*
 - In a recent case the paperwork was completed for a child to be released to her aunt but was denied release because the Deportation Officer believes an undocumented parent is in the United States. This child remains in INS custody.

Minors and their advocates are not kept informed of the process of release.

-Often when a child is denied release, neither the advocate nor the minor is told what the reasons are for the denial

The release process is not coordinated with the removal process.

-The Notice to Appear is issued quickly, the minor's first Master Calendar is within 3-4 weeks after arrival and judges only allow one- or two-week continuances for minors to be released or find an attorney to assist them in court

- *Minors without family are not released.*
-In a pending case, a sixteen-year-old who has all the paperwork completed to be released to a fostercare-certified family has been denied release. This minor is in effect being punished for pursuing his asylum appeal.
- *Higher risk minors are detained with other minors which causes more restrictive procedures to be applied to the general population.*
-Restrictions on phone use (a house-parent must be present at all times, lack of privacy, limited time and number of calls; minors complain often that their parent called from the home country and the minor was give the phone call)
- *Minors travel to and stay long periods at Krome Detention Center with no one to accompany them and explain the process.*
-Armed INS guards arrive at the Boystown facility to bring the minors to Krome
-Minors may sit for a whole day in processing waiting for one five minute master-calendar hearing with the judge
-Minors are never brought on time for master calendar court proceedings

Minors have little access to counseling.

-In one recent case a minor received an initial evaluation showing the need for continued counseling and treatment and the Deportation Officer asked FIAC to pay for it.

Minors need someone to accompany them to court.

-The judges will make the minors speak for themselves after two or three short continuances and will enter orders of removal without exploring whether the minor may be eligible for any relief.

-In one recent case the judge asked the Deportation Officer to represent a two-year-old in court.

-Children as young as six have appeared alone in court

- *Minors are given an unreliable forensic dental exam to determine their age if they appear older than eighteen.*

Minors who turn eighteen often languish for months in the adult facility before being considered for parole.

-In a recent case the deportation officer arbitrarily stated that the eighteen-year-old needed to complete the paperwork to be released as a juvenile before being considered for release



FLORIDA
IMMIGRANT
ADVOCACY
CENTER

*A non-profit organization dedicated to promoting and protecting the basic human rights of
immigrants of all nationalities*

• 3000 Biscayne Blvd., Suite 400 • Miami, FL 33137 • (305) 573-1106 • Fax: (305) 576-6273



Spies: CIA tries to make 'em like they used to
in-depth coverage from
esmonster.com



article search

go



TI
Sa

home

radio

classifieds

features

citystate

hot spot

nation

ny mirror

sports

art

books

dance

film/movieclock

music

theater

★☾ horoscope

the best of nyc

eats

nightguide

letters

personals

work at the voice

about us

make us your homepage

most popular today

most emailed

newsletter signup

Mark Fiore Cartoons



Every Thursday 3pm

features ●●●

The Gatekeeper: Watch on the INS

by Alisa Solomon

Kids in Captivity

Scared and Alone, Nearly 5000 Children Wind Up in INS Detention Each Year

February 27 - March 5, 2002

Davinder "Jimmy" Singh was only 14 in July 2000 when his father paid a smuggler to take him from his village near New Delhi to a new life with his aunt and uncle in America. It took him about 16 hours to fly from Bombay to New York and a year and a half to reach his relatives in California. In between, he spent nearly two months in a guarded hotel room where he was sometimes handcuffed to the bed at night; three months in a shelter where he threw up every day from being forced to eat everything on his plate, including the meat, which had never been part of his Sikh diet; and a full year in a youth detention center, where he says he was bullied by the larger boys and belittled by the staff. His host for this ordeal was America's Immigration and Naturalization Service (INS), which nabbed the undocumented boy upon his arrival at JFK and detained him as his request for asylum crawled through the system.

While the post-9-11 roundup of Arab and Muslim immigrants has put INS detention in the spotlight in recent months, the plight of the nearly 5000 children locked up by the system each year remains one of America's ugliest secrets. Their average age is 15; the vast majority are boys. Senate subcommittee hearings on a proposed bill to take the responsibility for such children away from the INS are scheduled for Thursday.

According to INS spokesperson Karen Kraushaar, when minors enter the U.S. illegally—usually for the same reasons as adults, seeking democratic freedoms and opportunity, fleeing persecution or war—the government takes great pains to locate U.S. relatives and usually manages to turn kids over to them within three days. In the thousands of instances in which such efforts fail, though, the agency places children into custody in one of some 90 facilities around the country—usually campus-like shelters run by nonprofit agencies, but sometimes high-security prisons that incarcerate U.S.-citizen juvenile offenders. Meanwhile the immigration courts consider whether the child can stay in the country or must be deported. Typically, the process averages a little over a month, says Kraushaar, but it can drag on much longer if there's trouble finding a sponsor or the agency fears that the purported

"relatives" are really "snakeheads," smugglers who will sell the kids into indentured servitude or prostitution.

But the system often breaks down, immigrant advocates charge. More than a third of the detained youngsters wind up like Jimmy, languishing in untenable situations for months, and sometimes for more than a year. Many of these children, already lonely and fearful, are further isolated because there's nobody around who speaks their language. During most of his detention, Jimmy communicated in Punjabi only during the two five-minute phone calls he was allowed to make to his relatives each week. Worse, more than half the kids don't have attorneys, despite the labors of pro bono projects around the country, so they often go into hearings with little understanding of what is happening and no knowledge of their legal options. Those with counsel are often transferred to facilities far away from their lawyers.

In one of the most egregious cases currently, Alfredo López Sánchez, a 16-year-old Mayan from Guatemala, has been shuttled from one facility to another seven times over the last two months, sometimes with his ankles shackled and his wrists handcuffed to a chain around his waist. Alfredo arrived in June, seeking asylum from domestic abuse so severe that a psychologist has diagnosed him with post-traumatic stress disorder. He was placed in a 56-bed shelter in Miami popularly known as Boystown. Operated by Catholic Charities under contract with the INS (to the tune of \$1.9 million a year), the residence looks like a low-rent boarding school. (Indeed, kids attend school there and begin each day reciting the Pledge of Allegiance.)

Claiming that Alfredo might be planning to run away, in November the INS transferred him to Monroe County Jail for "his own safety," though the jail's contract with the INS to hold immigrant detainees explicitly excludes juveniles. After Alfredo's attorney, Christina Kleiser of the Florida Immigrant Advocacy Center, complained, the INS moved him to a juvenile shelter in Leesport, Pennsylvania, 1200 miles away from one of the few interpreters of his rare native dialect, Southern Low Mam. In December, the INS transferred Alfredo back to Boystown for a day, then moved him to a Miami hotel, then back to the Monroe County Jail, which refused to house him, and then back to the hotel, where for about three weeks he sat in a guarded room all day in a weird sort of house arrest. In early January, the INS brought him back to Pennsylvania, then early this month back to another Miami hotel so he could attend a scheduled hearing there. It took a federal restraining order to keep him in Miami as his case goes forward.

Complaints about such seemingly arbitrary and pitiless actions on the part of the INS have been leveled for years by children's advocates, human rights groups, and internal government reports. A 1985 class-action suit, *Flores v. Reno*, challenged, among other things, the often lengthy terms and harsh conditions of minors' confinement; its settlement in 1997 after 12 circuitous years of appeals that went all the way to the Supreme Court established national guidelines, requiring, for instance, that children be detained in the least restrictive settings possible.

But a report this past September by the Office of the Inspector General found that the INS was placing too many kids in high-security juvenile

To adv

VOIC

• Pa:
Truth
• |
Ro
click

prisons, needlessly using restraints on them, and in other ways failing to live up to the 1997 settlement. While the report noted "significant progress," it found persistent problems that could have "serious consequences for the well-being of the juveniles." Of the 4136 unaccompanied minors held for more than 72 hours in fiscal year 2000, the report detailed, more than a third did at least some portion of their detention in "secure" facilities—that is, in prisons. Having committed no offense other than to seek refuge in the U.S., they were locked in behind bars and razor-wire fences, under the control of guards trained to take charge of criminals.

Now, as the INS considers an agency-wide structural overhaul, separating its service and enforcement branches, plans to completely revamp its juvenile department are on the table at last. In a speech in early February, INS commissioner James Ziglar asserted, "We need to do better protecting unaccompanied minors," a sentiment advocates regarded as sincere, if a massive understatement. Ziglar announced the creation of a special Office of Juvenile Affairs that will report directly to him instead of being housed in the division of detention and deportation.

The bill scheduled for hearings Thursday, the Unaccompanied Minor Protection Act, introduced by California Democrat Diane Feinstein, is far tougher. First, it would guarantee children attorneys and guardians. What's more, it would place the care of these kids in a new office outside the INS, staffed by child welfare professionals. Indeed, some advocates wonder whether Ziglar's administrative reform is a preemptive dodge to keep undocumented children in the INS's control.

Supporters of the Feinstein legislation say it goes a long way toward resolving what they have long regarded as a damaging conflict of interest in the agency: "The INS is both prosecutor and protector," explains Wendy Young of the Women's Commission for Refugee Women and Children. "They have custody of the children and must serve their best interests; at the same time it is their job to deport them." The INS's Kraushaar rejects this logic: "We don't have an interest in any of the outcomes other than to make sure the juvenile enjoys the full consideration under the law and arrives in a timely fashion for his or her hearings."

Official policy, perhaps. But kids don't see it that way. Those who spoke to the *Voice* might have expressed appreciation for "one nice guard" or "a lady who helped me in the shelter," but all said they felt intimidated, punished, confused, and upset, or "treated like a criminal." And there's little claim of neutrality from INS employees in the field. A deportation officer in the mid-Atlantic region, speaking on condition of anonymity, expressed pride in being able to "help America keep liars who aren't supposed to be here out of the country." At JFK airport, the dentist who administers a controversial X-ray test to determine the age of those it doesn't believe to be under 18 regards himself as defending the border against "drug dealers, human traffickers, and terrorists." He relishes what he calls "the forensic chess game. People come in with false documents, and I have the dental X rays to checkmate them."

While some migrants may indeed come under false pretenses, they can also get caught up as pawns in a larger game. The supervisor of the juvenile division in Florida, for instance, brazenly told a judge at a

hearing in Alfredo's case two weeks ago that he would not release the boy to any foster care programs because he was waiting for Alfredo's brother, living illegally in the U.S., to come claim him and be put into deportation proceedings himself.

In a more alarming example, zealous INS officers recently deported 13-year-old Isau Flores-Portillo, a street kid from Honduras, even though his asylum appeal was still pending. Though the INS won't comment on specific cases, attorneys for Isau believe he faced torture or even death back home. They cite the reputation of Central American police for clearing the streets of homeless kids by simply murdering them in a process known as *limpieza social*—social cleansing. According to a U.S. State Department human rights report, in 2000, "Honduran security forces were suspected of an estimated 200 extrajudicial killings, many involving persons under 18." The INS has moved to dismiss Isau's asylum case because the applicant is no longer in the country.

Jimmy was luckier. During his 18 months in detention, his case was picked up by a special pro bono project at the tony D.C. firm Latham and Watkins, which has an attorney who speaks Punjabi. The lawyers managed to get affidavits from neighbors in his village who testified to the relentless abuse Jimmy suffered at the hands of his stepmother, and in December, his asylum request was granted. Not only is the INS appealing the decision, it wanted to keep Jimmy in detention during the appeals process. Attorneys won his release earlier this month.

From his new home in California, Jimmy said he would have run away from home no matter what, but, he added, "I would live on the streets in India rather than go through detention again." And that from a child who spent the bulk of his time in Berks County Youth Center in rural Pennsylvania, a low-security shelter without bars or barbed wire, where there are classes each day and soccer games. (Still, kids held there say they are threatened with being moved to the high-security prison wing down the road if they misbehave.)

But for an adolescent like Jimmy, such benefits were outweighed by the loneliness, boredom, and persistent nightmares. Only since arriving at his aunt and uncle's has he been enjoying what most teenagers take for granted: enough time in a shower to rinse off the soap, pouring himself a glass of juice when he feels thirsty, being allowed to take a pen and paper into his room.

After all, these are kids. The restrictions of detention present special emotional hardships for teenagers. In eastern Washington State, for instance, INS kids are held outside Spokane at Martin Hall, a maximum-security juvenile prison with strict rules that apply equally to the delinquent citizen kids and the INS detainees: No more than five sheets of paper and two family photos in a cell, the handbook asserts. When going to a meal or recreation, it instructs, "come out of your room, close your door, stand by your door facing forward with your hands behind your back until asked to step into the middle of the hallway. . . . Do not talk to anyone."

A Jamaican teen who didn't want her name used spent a month and a half in the high-security wing at Berks. She reports she saw kids thrown and pinned to the ground by guards for the crime of lifting an arm. But

what was worse for her was suffering the acute adolescent embarrassment of having to dispose of sanitary napkins in full sight of the boys because there were no trashbins in the bathrooms. In Miami, FIAC attorneys wanted to give a donated Christmas present of a jigsaw puzzle and art set to Alfredo while he was confined to the hotel room with nothing to do and no one who spoke his language. According to the INS, such items are "contraband." Alfredo got no gifts.

The underlying trouble, says Chris Nugent, director of a pro bono immigrant project at the American Bar Association, is that the INS regards these kids "as detainees first and as children second. That's what needs to be reversed."

Yet sometimes the INS doesn't recognize them as juveniles at all. Adults have narrower avenues of relief and face more severe detention conditions than those under 18, so undocumented migrants have a good motive for trying to pass as a minor. The INS says that it must be especially vigilant to keep adults out of shelters that house children, so when people give birth dates that seem doubtful, they are sent for the X-rays that show wisdom teeth growth and whether the ulna and radius bones have fused in the wrist. Advocates say the tests are unreliable and given far too much weight over documents, psychiatric evaluations, and other evidence in cases against young people who genuinely need help.

According to Dr. Robert Trager, the dentist with offices at JFK and LaGuardia airports who has conducted some 1500 such tests for the INS, "[Undocumented travelers] try every trick in the book to get in here, and you've got to feel sorry for them, but I can't let personal feelings get in the way of science." In at least 90 cases out of 100, he finds the patient to be lying, and he claims the tests have an accuracy rate of more than 96 percent.

But Dr. Herbert Frommer, director of radiology at the New York University College of Dentistry, says that "Dr. Trager's position has no scientific validity." In an affidavit, Dr. Frommer cites a "wide variation in the age at which third molars erupt in the mouth" because of differences in "race, gender, and ethnic origin," among other factors. Orthopedists regard the wrist-bone test as equally imprecise. Still, these tests are the best scientific tools the INS has in its effort to piece together what Kraushaar calls the "mosaic" of a person's identity. "The INS is responsible for making sure we know exactly who is seeking entry to the U.S. and verifying their ID includes age," she explains. "What if a terrorist who was 19 said he was 16 and an orphan and the story didn't check out, but we released him and he went and blew up a building? Would it be his attorney that would take the fall? I don't think so."

Thus, Huai Chun Zheng—or "Danny"—has been sitting in an adult jail in Georgia for more than two years. The INS X rays pegged him as over 18, though he claims he was only 15 when he was apprehended at a port in Savannah after spending a week under the deck of a ship from China. He applied for asylum, and as his case inched along, he whiled away what should have been vital years "mostly just sitting in my room all day." Between his fear of being returned to China and the noise of the more than 20 men in his dorm, he barely sleeps, he said by phone through an interpreter last week.

His asylum petition has been denied, and Danny has been issued a final order of deportation, but he is still holding out hope that, somehow, the INS will release him to his cousins in New York and that he'll be able to fulfill his dream of going to school. His lawyer, Rhonda Brownstein of the Southern Poverty Law Center, managed to track down a notarized birth certificate for Danny, but the INS doubts its authenticity because it lacks fingerprints. "Do your birth certificates in America have fingerprints?" Danny wants to know. Yet even by the birth certificate's count, Danny turned 18 last month, so the law that would permit him to be released to relatives no longer applies. To date, China has not produced the travel documents needed for his deportation, so Danny sits in limbo, waiting—but he's not sure for what.

Mohamed Boukraghe has no relatives to claim him. Orphaned at age 10 in his native Algeria when a car bomb blew up his parents and sister, he says he went to live with an aunt who threw him out, concerned that his father's reputation as a "traitor" for dealing with French businessmen would harm her own family's standing. So Mohamed stowed away on a boat to France, then made his way to Italy, where, for about four years, he picked up menial jobs and squatted in abandoned buildings. In October 2000 he joined some other workers on a boat he thought was going to Canada, but he was snagged by the INS when it docked in Newark. They took him right to Dr. Trager's office at the airport, where he was pronounced to be at least 18 years old; Mohamed says he was 16.

In May an immigration judge rejected Mohamed's asylum claim, saying that his story lacked convincing detail. His pro bono lawyer, Erin Corcoran of the Hebrew Immigrant Aid Society, appealed, noting that Mohamed was only eight or nine when his family was killed: How much detail could he be expected to remember? Corcoran's final request for reconsideration was denied in January.

All the while, he has been held in an adult INS detention center in Elizabeth, New Jersey, the fluorescent-lit former warehouse near Newark Airport, where he told his story from a cold visitor's room in late January. He passes the interminable time sitting in his dorm reading the Koran, he said. He gets an hour's exercise each day in an enclosed courtyard, so he has not been outdoors in almost a year and a half. Acne runs rampant over his dimpled cheeks.

Speaking through an interpreter, Mohamed said he'd like to learn English, but unlike the juvenile shelters, the adult detention centers don't offer any classes. His vocabulary is limited to the phrases he hears from guards: "Get in line." "Do what I tell you." "No talking."

When he is perceived to have broken a rule—like when he got into a fight he says started when a larger, older detainee made a sexual advance—he is sent to solitary confinement, where he is denied the meager communal privileges of exercise and prayer.

According to a psychiatric evaluation by Dr. Alice Kross Frankel, Mohamed is "suffering from both depression and traumatic stress reactions" that are exacerbated by his imprisonment and "altogether inappropriate placement." He was wetting his bed when he first arrived at Elizabeth. He still has nightmares. Dr. Frankel recommended

Mohamed's prompt release to the nonprofit youth home Covenant House, which has agreed to take him in.

Meanwhile, Corcoran is racing against the clock to try to win the only relief left: "special immigrant juvenile status," a sort of junior green card for youngsters who are abandoned, abused, or neglected. But even to be considered for this status, Mohamed has first to be recognized as a juvenile, so Latham and Watkins lawyers are preparing a federal suit claiming that the unreliable age determination test violates Mohamed's due process. A hearing is likely later this week.

If they prevail, the INS will have to let Mohamed's case be heard at family court, which has jurisdiction over who qualifies for this special status. But even if family court says yes, the INS has been known to take so long to process such claims that the young immigrants "age out"—that is, they turn 21 and become ineligible before they can secure the benefit. Mohamed isn't thinking about these legalistic twists. But he is thinking about the future. "I'm still young and can be educated," he said, expressing an interest in architecture. He added, "And I want a place to belong to."

Research assistance: Xiaoqing Rong

This is the second of an ongoing series investigating the INS.

asolomon@villagevoice.com

Letter to the Editor

E-Mail Story

Voice Newsletter

Recent The Gatekeeper: Watch on the INS columns

- **Detainees Equal Dollars** The Rise in Immigrant Incarcerations drives a prison boom — *Post-9-11, INS detainee overflow has proven a cash crop for some financially strapped correctional facilities. Alisa Solomon reports.*
- **Protecting the Homeland** Ten Ways to Keep America Safer Without Trampling on Immigrants
- **Haiti's Unauthorized Refugees Held in Miami** — *Are asylum seekers from Haiti being held in Miami prisons for political reasons? Alisa Solomon reports.*
- **The Golden Ticket** Will Our Refugee Program Survive 9-11 and the Breakup of the INS? — *In the fourth part of her series "The Gatekeeper: Watch on the INS," Alisa Solomon asks: Who qualifies as a refugee?*
- **Nightmare in Miami** Transsexual Christina Madrazo Says She Was Raped by a Guard in an INS Detention Center. Now She's Suing the U.S. for \$15 Million. — *A Mexican transsexual charges that an INS guard raped her while she was in a Florida detention center. In the latest installment of "The Gatekeeper: Watch on the INS," Alisa Solomon tells the horror story of Christina Madrazo.*

Receive an alert every time The Gatekeeper: Watch on the INS is posted.

Email address:

Features | CityState | Hot Spot | Letters | Nation | NY Mirror | Sports | Art | Books | Dance | Film | Music | Theater | Classifieds | Personals | Eats | About Us | Contact Us | Cover Credits | Home

☒ [Click here to visit other RealCities sites](#)

[Post our Resume](#)

☒ [miamiherald.com - The miamiherald home page](#)

☒ [Miami Photos](#)

☒ [new!](#) ☒ [business](#) ☒ [sport](#) ☒ [entertainment](#) ☒ [living](#) ☒ [classified](#)

☐ [Help](#) ☐ [Contact Us](#) ☐ [Site Index](#) ☐ [Archives](#) ☐ [Newspaper S](#)

☒

Local/State

- ☐ [Florida](#)
- ☐ [Florida Keys](#)
- ☐ [Broward](#)
- ☐ [Neighbors](#)

Nation

World

Americas

- ☐ [Canada](#)
- ☐ [Cuba](#)
- ☐ [Haiti](#)

Business

- ☐ [Action Line](#)
- ☐ [Careers](#)
- ☐ [Consumer Watch](#)
- ☐ [International](#)
- ☐ [Latin America](#)
- ☐ [Local/State](#)
- ☐ [Making Money](#)
- ☐ [Money](#)
- ☐ [Makeovers](#)
- ☐ [National](#)
- ☐ [Real Estate](#)
- ☐ [Technology](#)

Living & Arts

- ☐ [Arts](#)
- ☐ [Books](#)
- ☐ [Food](#)
- ☐ [Gardening](#)
- ☐ [Health](#)
- ☐ [Home](#)
- ☐ [Parenting](#)
- ☐ [People](#)
- ☐ [Real Estate](#)
- ☐ [TV](#)
- ☐ [Travel](#)

Posted on Fri, Feb. 08, 2002

☒ [story:PUB_DES](#)

Boy, 16, endures an odyssey through immigration lockups
BY AMY DRISCOLL
adriscoll@herald.com

A 16-year-old Guatemalan boy who speaks a rare Mayan language and suffers from post-traumatic stress disorder remained in legal limbo Thursday in a case that highlights the continuing debate over the treatment of unaccompanied minors by immigration officials.

Like hundreds of other children who enter the United States alone and illegally every year, Alfredo Lopez-Sanchez initially was sent to Boystown, an emergency shelter for immigrant children in southwest Miami-Dade County, after he crossed the border into Texas in July.

But Boystown officials say they learned that Lopez was planning an escape from the unsecured shelter, so they shipped him to the Monroe County Jail -- and that's where the debate begins.

Lawyers from the Florida Immigrant Advocacy Center, representing Lopez, say that over the next three months the boy was bounced from jail cell to hotel room to a youth shelter in Pennsylvania -- a total of seven transfers.

They say officials from the Immigration and Naturalization Service shunted the boy from place to place without regard for his deteriorating mental condition and his need for an interpreter to comprehend his situation.

"I was very sad, and I was crying, and I was thinking that Boystown was better than the small space I was in," the boy said in federal court in Miami on Thursday, describing through an interpreter the days he spent in the Monroe County Jail.

[Shop](#)

[Find](#)

[Find](#)

[Find](#)

[Find](#)

[Class](#)

[Shop](#)

Weekend

☐ **Wheels & Waves**

Sports

☐ **Baseball**

☐ **Basketball**

☐ **Boxing**

☐ **Colleges**

☐ **Football**

☐ **Golf**

☐ **High Schools**

☐ **Hockey**

☐ **Horse Racing**

☐ **Motor Sports**

☐ **Outdoors**

☐ **Soccer**

☐ **Tennis**

☐ **Wrestling**

Opinion

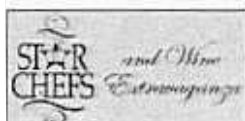
☐ **Editorials**

☐ **Letters to the Editor**

Columnists

Corrections

Obituaries



The final stop: Berks County Youth Center in Leesport, Pa., more than 1,200 miles from the attorney who has been representing him and the interpreter who has translated English to Mam, the Mayan language Lopez speaks.

An INS official said Lopez was moved to the Pennsylvania shelter because it is surrounded by woods and the boy would have to walk for miles to escape, while Boystown is in a more suburban area, close to major roads.

Lopez, who looks younger than his age, has told his lawyers he has a mentally ill mother and an abusive father who killed his little sister in front of him. He lived in a rural town in Guatemala, he said, with no TV. He attended school "off and on" for three years and understands a few words of Spanish.

In court Thursday, he described how he learned about one of his transfers: "I went to a court hearing, and I was told I was going somewhere else."

Lopez wasn't returned to South Florida until immigration lawyer JoNel Newman filed a complaint asking for a federal injunction against the INS to force the agency to place the boy within easy reach of his lawyer and interpreter.

Allen Hausman, a lawyer for the Justice Department's office of immigration litigation, said the government has a responsibility to protect Lopez. If he escaped and was harmed, it would be the responsibility of the government, he said.

"For a person of this age and appearance and size, there are people in our community who might offer a hand of friendship and then exploit this youth," Hausman said.

U.S. District Judge Federico Moreno, seeking to find middle ground, suggested that Lopez's lawyers file a petition asking the INS to move the boy back to South Florida until his asylum claim can be heard.

The judge also asked to hear from the acting INS district director for Florida, John Bulger, when the hearing resumes Feb. 15. He issued a temporary injunction against the INS that allows the boy to stay in South Florida until the hearing.

"He's not going anywhere," Moreno said. "There's no point in flying him back and forth."

[email this](#) [print this](#)

m

Fin
Re

S

pr
o
&

No

Pla

Stocks

Enter
syml
name



The New York Times

ON THE WEB

August 10, 2001

Detained Nigerian Girl, 8, Finds Home With a Cousin

By ERIC SCHMITT

WASHINGTON, Aug. 9 — An 8-year-old Nigerian girl who has been detained for 15 months in a Miami shelter was released tonight to live with a cousin in Hartford, United States immigration officials said.

The release ended a legal limbo for the girl, nicknamed Fega, whose lawyers say was abandoned by her parents after she arrived in the United States alone with false papers in May 2000.

Immigration officials had failed to find her mother, who was believed to be living in the New York area at the time, and her father had told caseworkers in Florida that he did not want her sent back. The girl's case was described in a front-page article in The New York Times on June 24.

Shortly after that article was published, United States immigration officials sent a deportation officer to London, where the father had moved. In that meeting, the father said he had not severed ties with his daughter, and officials began working with him to find a temporary guardian in the United States.

Immigration officials in Florida and Washington enlisted the aid of 20 agencies, Nigerian community leaders in Miami and the Nigerian consulate in Atlanta to help unite Fega with her cousin. Officials asked that the cousin, a married woman with children, not be identified, but said she had very strong qualifications for taking custody of the child: She is an investigator with the Connecticut children's services department.

"Fega is the happiest child in the whole wide world right now," Francisco Brizuela, an administrator who oversees the shelter, said in a telephone interview. He said shelter officials threw a farewell party for Fega today.

Fega's release was assured today when her father, back in Nigeria, met with the acting United States consul general in Lagos. American officials said the father produced documents proving Fega was his daughter, and then signed a statement authorizing his cousin to take custody of the girl until her immigration status could be resolved.

"This is wonderful news," said Christina M. Kleiser, a lawyer for the Florida Immigrant Advocacy Center, which has represented Fega.

Ms. Kleiser has been seeking asylum for the girl on the grounds that her parents abandoned her. A hearing is scheduled in Miami for Aug. 21, but Ms. Kleiser said she would now consult with Fega's cousin to determine what steps to take next.

For the last 15 months, Fega has been living in a squat, mustard-colored building that serves as an

emergency shelter for unaccompanied immigrant children who have slipped into the country illegally by crossing borders or landing at airports with false papers.

The 32-bed shelter, called Boystown, which is run by the Catholic Charities of the Archdiocese of Miami under contract to the immigration service, ranks near the top for quality of care at such shelters, immigrant advocates say.

Still, the average stay at the shelter is 16 days. Since Fega arrived, more than 400 youngsters have come and gone. She has been at the shelter so long that she has learned some Spanish, Creole, Chinese and English from the children who have passed her by.

[Home](#) | [Back to National](#) | [Search](#) | [Help](#)

[Back to Top](#)



[Click Here](#) to Receive 50% Off Home Delivery of The New York Times Newspaper.

Copyright 2001 The New York Times Company | [Privacy Information](#)

Case of Detained Nigerian Girl Takes U.S. Agency to London

By ERIC SCHMITT

WASHINGTON, June 25 — United States immigration officials dispatched a deportation officer to London over the weekend to interview a man they believe is the father of an 8-year-old Nigerian girl who has been detained for more than 13 months in a Miami shelter for unaccompanied immigrant children.

The Florida Immigrant Advocacy Center, an independent group, is seeking asylum for the girl, nicknamed Fega, on the ground that her parents abandoned her after she arrived in the United States alone with false papers in May 2000. Immigration officials have failed to find her mother, and her father had told caseworkers in Florida that he did not want her sent back. The girl's case was described on Sunday in a front-page article in *The New York Times*.

But in an interview with an immigration officer on Saturday, the father said he never severed his ties to his daughter and asked that her maternal aunt be given temporary custody until the girl's immigration status could be resolved, a senior immigration official said today.

"He was asked point-blank if he had ever abandoned his rights to the child, and he said he never had," said David J. Venturella, a senior deportation official with the Immigration and Naturalization Service. "He said his intent was to get his child to the U.S., a better country with better opportunities, and that he would join her at some time."

If the father submits paperwork needed to transfer custody of his daughter, it could bring Fega an important step closer to finding a home, either with him in Nigeria, her aunt in New York City or a foster care family somewhere else.

Immigration officials were hard-pressed today to explain why it took them 13 months to intervene in Fega's case, which until now they had left to shelter workers, even though the case was supposedly a high priority for the immigration service here and in Miami, as well as the United States Embassy in Nigeria. The average stay for immigrant children at the Miami shelter is 16 days.

Mr. Venturella said caseworkers

at the shelter, Boystown, had been conducting most of the investigation until a reporter for *The New York Times* inquired about the girl last Wednesday after visiting the shelter.

Senior officials at I.N.S. headquarters hastily arranged a conference call with their counterparts in Miami to evaluate the girl's status and "bring some closure" to the case, Mr. Venturella said.

A deportation officer in Miami who was returning another immigrant to London volunteered to try to contact the father, whom immigration officials learned was living in England illegally.

Fega's father told the deportation officer that he had tried to give the custody-transfer documents to the United States Embassy in London, but was turned away because he did not have an appointment.

"Apparently, there was a disconnect there," Mr. Venturella said.

Christina M. Kleiser, Fega's lawyer, said she welcomed the news that the child might be transferred to her aunt's custody, but said she would urge that a juvenile court judge review the case to determine the girl's best long-term interests.

The immigration service and Ms. Kleiser said that they had considered Fega's aunt as a temporary home before but that the aunt was unable to provide enough supporting documents from the girl's father. Immigration officials also said the aunt and her family had expressed ambivalence about sponsoring their niece, fearing that they could not shield her from deportation.

In any event, officials involved in the case as well as independent experts said today that keeping Fega in the 32-bed temporary shelter was not the answer.

"It's very hard on a child's sense of trust and safety in the world to not have a home to live in," said Kate Porterfield, a child psychologist with the Bellevue-New York University program for survivors of torture, who works with child refugees. "Children need to feel they have a home, and detention is not home."

"All the News
That's Fit to Print"

The New York Times

VOL. CL... No. 51,794

Copyright © 2001 The New York Times

SUNDAY, JUNE 24, 2001

I.N.S. Both Jailer and Parent To a Child Without a Nation

By ERIC SCHMITT

MIAMI, June 18 — For more than 13 months, an 8-year-old Nigerian girl with pigtails and a thousand-watt smile has been held in custody here by immigration officials, abandoned by relatives after she arrived alone in the United States and now trapped in a legal limbo.

The girl, nicknamed Fega, celebrates the rites of childhood in a squat, mustard-colored building that serves as an emergency shelter for unaccompanied immigrant children who have slipped into the country illegally by crossing borders or landing at airports with false papers.

In October, shelter officials surprised Fega with a special cake on her birthday. Last week, she graduated from a kindergarten class taught here. And almost every night for more than a year, someone has read her a bedtime story.

She has no family to speak of. She gets no mail or phone calls. Her friendships with children here are fleeting. Since Fega arrived 406 days ago, almost 350 youngsters have come and gone, most reuniting with relatives. The average stay is 16 days.

But Fega is still here, watching all this like a tiny windswept island in a swirling sea, wondering when her

turn will come. Time seems to be taking a toll on the child, who has been here so long that shelter officials say she has learned some Spanish, Creole, Chinese and English from the children that pass her by.

"She used to ask me, 'When am I leaving?'" said Christina M. Kleiser, a lawyer with the Florida Immigrant Advocacy Center who represents Fega and visits her on Wednesdays. "She doesn't ask me that anymore."

For months, the Immigration and Naturalization Service has sought a relative, here or abroad, to take in the girl, whose father no longer wants her and whose mother has vanished, fearing deportation if she steps from the shadows to claim her.

Fega's plight is hardly unique among the thousands of unaccompanied children, infants to teenagers, detained annually by the immigration agency, which assumes complete control over their lives as it seeks to deport them for entering the country illegally.

Over the last year, immigrant advocates say, a 7-year-old girl from India was detained for eight months in a shelter near San Diego. A 16-year-old boy from China spent more



Andrew Itkoff for The New York Times

Fega, a Nigerian girl detained at a Miami immigration shelter, ate breakfast recently with the help of Yanine Manigat, a house parent.

Continued on Page 15

I.N.S. Is Jailer and Parent To 8-Year-Old Nigerian Abandoned in the U.S.

Continued From Page 1

than a year in detention in Chicago and Texas. A 16-year-old boy from Liberia spent 18 months in Pennsylvania jails, before he was granted asylum. Immigration officials say these cases are exceptions.

Acting as both caregiver and captor for roughly 500 children on any given day, the immigration service is caught in an untenable conflict of interest, critics say.

"The I.N.S. is playing two irreconcilable roles with these children: one as their caregiver and another as the law enforcement agency seeking their deportation," said Wendy Young, head of government relations and United States programs for the Women's Commission for Refugee Women and Children, a private, non-profit advocacy group.

The detention of immigrant children at shelters and juvenile jails across the country has seized the attention of Congress and legal groups. Legislation is pending in both the House and Senate to create an Office of Children's Services within the Department of Justice.

As the number of children in detention has soared to 4,600 from 2,400 in 1997, pilot programs are springing up in states like Arizona to ensure that all children in the immigration agency's custody get a lawyer.

The children have the right to speak to a lawyer, if they can hire one or find one, like Ms. Kleiser, to work free. Information is posted on bulletin boards, and Ms. Kleiser is constantly on the lookout for newly arrived children who might need her help. But many children cannot find legal help, and end up being deported after trying to defend themselves in immigration court against seasoned I.N.S. lawyers, immigrant advocates say.

"This girl's story is just one of far too many cases in which bureaucracy trumps compassion, logic and the moral and legal obligation of this country to protect children," said Senator Bob Graham of Florida, a

Democrat who has contacted the I.N.S. on the girl's behalf.

The conflict over the best interests of detained children is especially apparent in Fega's case.

For months, Ms. Kleiser has urged the immigration agency to allow a state juvenile court judge to review Fega's file and decide whether to place her in foster care. Ms. Kleiser said her own agency has identified an African family in the Miami area who would be perfect.

But immigration officials here denied Ms. Kleiser's request in January, citing a confusing series of claims from purported aunts, uncles and cousins, as well as a suspicion that Fega's parents were faking her abandonment to secure her permanent residency in a better life in America, even if with foster parents.

Immigrant advocates say the I.N.S. sees dark plots where none exist, and are letting their law enforcement bias interfere with Fega's well-being. "They're not child-welfare experts," said Ms. Kleiser, whose agency has handled 23,000 immigrant cases since its founding five years ago.

In fact, the Immigration Service's juvenile coordinator in Florida, Dean Caputo, was a sports trainer and Marine Corps security guard before he became a deportation officer nearly three years ago.

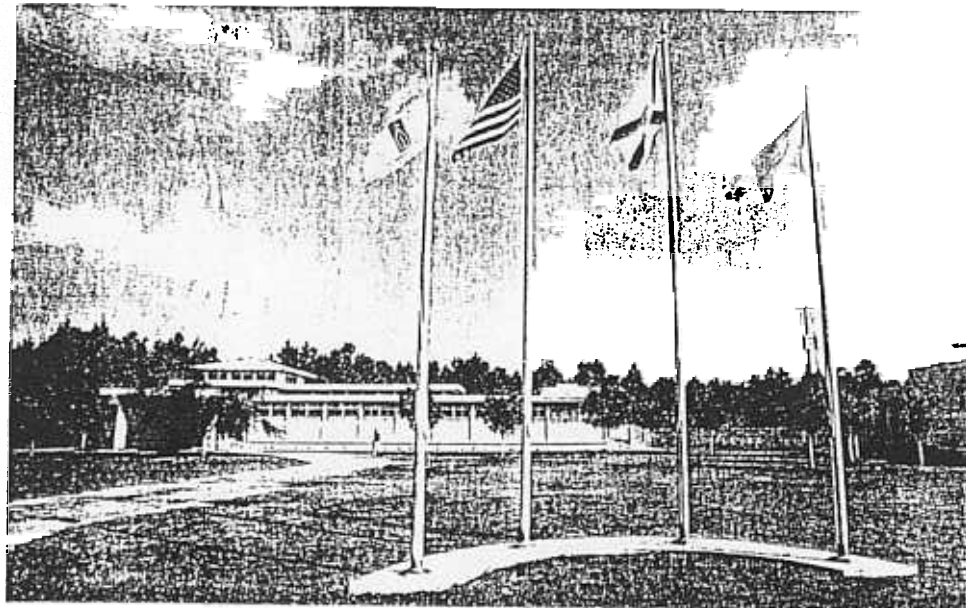
By last month, even senior lawyers at I.N.S. headquarters in Washington said that enough was enough and recommended that Fega be granted a special visa for abandoned children, allowing her to be placed in foster care.

But detention officials here and in Washington said no, although they may soon relent.

"We want to try one more time to locate and identify the parents," said David J. Venturella, a senior detention official at the agency's headquarters. "We are going to put some closure on this."

To keep up the pressure, Ms. Kleiser is seeking asylum for Fega on the grounds of abandonment. A hearing is set for Aug. 7.

Much of Fega's story, like that of many illegal immigrants and asylum seekers, is murky. This is what her lawyer and immigration officials say they know:



An abandoned girl, nicknamed Fega, has celebrated the rites of childhood in a squat, mustard-colored building in Miami that serves as the I.N.S.'s emergency shelter for unaccompanied illegal immigrant children.

She arrived by herself at Kennedy International Airport in New York on May 8 last year aboard a Lufthansa Airlines flight from Nigeria via Frankfurt. Immigration inspectors quickly determined her passport and visa were fake. When no one claimed

So on May 9 a year ago Fega's life began at the 32-bed shelter here called Boystown, which is run by the Catholic Charities of the Archdiocese of Miami under contract to the Immigration and Naturalization Service. Fega was sent here from New York because authorities believed it was the best setting for her and there was space available.

As shelters go, Boystown ranks near the top, immigrant advocates say. The government pays \$157 a day per child. There are two dormitories, called cottages by the shelter officials, one for boys and another for girls and all children under 10. The buildings are light and airy, with small bedrooms flanking a living room. There are no bars on the windows, and most doors are unlocked, yet the shelter prides itself on having only a small number of runaways each year.

The children receive new clothes and three meals a day. They study math, history and science with Miami public-school teachers who specialize in teaching students who speak no English.

Almost immediately, shelter workers said, Fega stood out among the children from places like Cuba, Haiti and China, who range in age from 2 to 17.

"When she first came, she was very hyper and was identified as having attention-deficit disorder,"

said Francisco Brizuela, Boystown's administrator. "But she was very smart. There's something amazing about her. She's always smiling, always hugging."

Indeed, when a visitor and photographer arrived at breakfast, Fega rushed to embrace them, a huge smile spreading over her face. She nodded shyly in response to questions, but did not talk.

Fega was just getting over a bout of chicken pox, which turned out to be a mixed blessing. She had to stay in her room to avoid the other children, but that also meant extra care from shelter workers who read to her and brought a television into her room. "She loved the extra attention," Mr. Brizuela said. "She felt like a queen."

This is a girl who shelter officials say loves to paint pictures (a yellow ladybug drawn on a paper plate adorns the dormitory bulletin board), watch "Toy Story" on video and gobble up Chinese food on the occasional supervised outing the children take to a restaurant.

As the days roll by, even Mr. Brizuela questions the logic of keeping Fega here any longer.

"The I.N.S. is doing their best, they really are," said Mr. Brizuela, who is a doctoral candidate in educational leadership and management. "But maybe it's time for her to have a family. She needs a family."

Measures Aim At Violence Along Border

By ERIC SCHMITT

WASHINGTON, June 23 — The United States and Mexico have announced several steps to improve safety along the California border, including a pilot program to arm Border Patrol agents in San Diego with nonlethal weapons that fire marble-size pepper pellets to disperse crowds.

Border Patrol agents are now equipped with batons and pepper spray, but those devices are effective only at close range. The new nonlethal weapons, which officials said were used by several police departments in the United States, can hit targets 100 feet away.

The measures, including better mapping of remote desert areas and improved sharing of intelligence to combat immigrant smugglers, were announced on Friday and were to begin immediately. They come in response to the May deaths of 14 Mexicans abandoned by smugglers in an Arizona desert.

American and Mexican officials in San Diego and in Mexico City said the new measures would reduce violence — sometimes deadly — clashes along the border.

"Mexico has long insisted that it is one thing to have a person cross the border in search of work," Deputy Foreign Minister Enrique Berruga said, "and it is another to have that person be subjected to attacks by authorities. We are most interested in preventing people from being hurt simply because they have crossed the border, and this is a very important advance."

Mr. Berruga said Mexico hopes to avoid incidents like the immigrants' deaths and the fatal shooting of an immigrant, Roberto Chávez Reséndiz, by a Border Patrol agent near Selis, Ariz.

Mexican officials said that by the end of the year they intended to increase by 40 percent the presence of immigration agents on the Mexican side of the border. The agents, called Grupo Beta, try to discourage immigrants from crossing the border by warning them of the dangers.

The agents advise immigrants of their rights and have helped to rescue them from drowning and dehydration. But, by Mexican law, the agents cannot forcibly stop immigrants from trying illegal crossings.

CITY STREETS TO COUNTRY FIELDS:
GIVE TO THE FRESH AIR FUND

THE NATIONAL LAW JOURNAL

VOL. 23, NO. 34 © 2001 NLJ PUBLICATIONS

The Weekly Newspaper About Law and Litigation

PRICE \$3.50 • MONDAY, APRIL 16, 2001

ON THE WEB: WWW.NLJ.COM

Access denied

Children in INS custody have no right to a lawyer; those who get one risk retaliation.

Center, had represented the boy for more than 11 months, visiting him weekly, but the INS didn't find that sufficient reason to inform her of the relocation.

"To me, it seems they are really annoyed with attorney ac-

**In the hands of the INS:
One boy's story, A16**

BY ELIZABETH AMON
NATIONAL LAW JOURNAL STAFF REPORTER

A MONTH AGO, Miami lawyer Christina Kleiser was paged by a 15-year-old client, a Guatemalan boy seeking asylum in the United States because he fears political persecution.

She assumed he must be calling from an Immigration and Naturalization Service (INS) shelter just 45 minutes from her office, where he was being detained. But the boy told her he was calling from a facility 1,400 miles away in Chicago, where he'd been suddenly transferred.

He told her that another client she had represented for eight months, a Chinese girl who was the victim of smugglers, had been transferred, too.

Ms. Kleiser, a lawyer with the Florida Immigrant Advocacy

cess," says Ms. Kleiser, who makes a common complaint among lawyers for such children that the INS makes client access difficult and retaliates against lawyers who complain.

Still, her clients are among the lucky ones. At least they have a lawyer. Of the more than 4,600 people in INS custody

[SEE 'CHILDREN' PAGE A16]

NURT VALERIO/THE MIAMI HERALD



Kid's Counsel: Christina Kleiser of the Florida Immigrant Advocacy Center.

Counsel hard to come by for kids in INS custody

[CHILDREN FROM PAGE A1]
under the age of 18, fewer than half have attorneys, principally because neither they nor alien adults have a right to one.

Such children, most unaccompanied minors, must navigate the complex INS proceedings alone. And their claims are subject to the same high standards of proof as those of adults. That often involves complex allegations about life-threatening issues of abuse, neglect, torture, violence and political upheaval. If they fail, they are deported.

Help may be on the way for these youngsters and the lawyers who represent them—or want to. Senator Dianne Feinstein, D-Calif., has introduced a bill that would address both the lack of legal

representation and some of the problems that the children's advocates complain about.

Her "Unaccompanied Alien Child Protection Act," Bill S121, would establish an Office of Children's Services within the Department of Justice to help ensure that children have access to appointed counsel and guardians ad litem. It would require minimum standards governing the custody of the children, which could alleviate the problems detainees' lawyers are experiencing.

"We have a special obligation to ensure that every child who comes into contact with the INS is afforded fair and humane treatment," Sen. Feinstein said in a statement made through an aide.

"That does not appear to be the case today."

An INS conflict of interest?

The bill would provide the children with the same access to counsel as U.S. citizen children who are appointed counsel and sometimes guardians ad litem by juvenile and family courts. Advocates say the bill is important, not only to provide lawyers to help the children, but to remedy a fundamental conflict of interest that the INS faces.

"Basically you've got the fox watching the hen house," says Wendy Young, the director of government relations for the Women's Commission on Women and Children Refugees. "By placing the kids

in the custody of the INS, the very same agency that is prosecuting them, you have an untenable conflict."

The nonprofit monitoring organization is backing Sen. Feinstein's legislation and has gotten Latham & Watkins to do pro bono lobbying on its behalf.

"The bill will make sure that from the time the kids get there to the time their case is done, they are taken care of properly," says Latham & Watkins associate Andrew Morton. "They need to have access to counsel and guardians ad litem."

Latham & Watkins lawyers have been so upset by the treatment of kids in INS custody that the firm has taken up the issue as a signature pro bono project. "When someone describes the way these kids are being treated, you can't help but to sympathize," says Steven Schulman, the firm's pro bono coordinator.

Consequently, Latham will commit its lawyers across the country to represent individual children in detention. And the firm will take a look at the standards that currently govern the treatment of children in INS custody, laid out in a 1997 settlement, *Flores v. Reno*, 507 U.S. 292. Mr. Schulman says the firm will look at whether *Flores* is being violated—a complaint by advocates—and whether there's a litigation strategy the firm needs to develop to remedy that.

Currently, oversight of implementation of *Flores* is done by the original plaintiffs, the Center for Human Rights & Constitutional Law in Los Angeles. Carlos Holguin, general counsel for the center, called the government's compliance with *Flores* "spotty."

Mr. Holguin says that the most serious area of noncompliance by the INS is its failure to publish regulations on the treatment of children. "We've not made a big deal of the failure to publish regulation because the initial proposed rule-making that the INS did was so bad. For the moment, the settlement agreement itself has better language than the proposed regulation did."

The INS insists that it is in compliance with *Flores* and that the court that approved the settlement has found the agency in compliance every year. John Pogash, acting director of juvenile affairs for the INS, says, "If there are errors, I believe they are very infrequent and surrounded by other mitigating factors."

The agency declined to comment on Sen. Feinstein's bill. Mr. Pogash did acknowledge there are several gray areas in immigration law that would benefit from legislation: "It isn't very clear who speaks for the juvenile and when. Also, what about parental rights? And parental responsibilities? I think the system as a whole needs to be looked at."

There may be support for Sen. Feinstein's bill from immigration judges. Last year, the executive office for immigration review, the judges' organization, hired a pro bono coordinator, Steven Lang. Mr. Lang says one of his top priorities is to address the problems of unaccompanied minors in INS custody. "It has been frustrating for immigration judges to have a 13-year-old girl or boy before them and ask them questions about what they want to do and then have the child break down in tears, frustrated and scared. What can the immigration judge do?"

Retaliation

For those already working with children, some extra help would be gladly received: so would a change in the way the lawyers are treated now. At first, Ms. Kleiser didn't want to talk on the record

Honduras to Mexico to America—to jail

AT 14, EDWIN MUNOZ had had enough of life in San Pedro Sula, Honduras. An orphan, he had been abandoned at 7 and left in the care of a cousin who forced him to sell grilled corn on the street. If he did not bring back enough money, his cousin beat him with a wet noose, which left scars on his arms and chest. Fed up, the 70-pound teenager set out on foot for the United States.

After walking and hitchhiking for several months, he reached Tijuana, Mexico, only to be deported and sent home by Mexican immigration officials. Undeterred, he immediately set out again for the United States. When Edwin reached the border in August 2000, the Immigration and Naturalization Service took him into custody.

He was put in a shelter facility but was transferred after a week to San Diego Juvenile Hall, where he was housed with violent juvenile offenders.

The agency's detention of children like Edwin in juvenile jails is a cause that the American Bar Association has taken up. Edwin, the bar feels, is a perfect example of the problem.

"We believe this is an issue that the lawyers of America...can and should address," ABA President Martha Barnett said at the association's mid-year meeting in February.

Edwin's story has a happy ending. When the slight teen was brought before him in shackles, the immigration judge drafted attorney Manny Sanchez, who happened to be there on other business, to represent the boy pro bono. Edwin was fortunate. More than half of the children in INS custody neither have attorneys nor even the right to one.

Mr. Sanchez, a solo practitioner, won asylum for Edwin after arguing that in Honduras he would face domestic violence, servitude and the prospect that as a street child he would be subject to government "social cleansing"—that is, murder. In February, Edwin was released and flew to Michigan, where he is now in eighth grade and living with a foster family.

Kids kept in jails

The INS houses children like Edwin in 95 facilities, 25 of which are shelters. The rest are juvenile jails, which house either one-third or one-fifth of the children, according to advocates and the INS.

Under a 1997 court-approved settlement, *Reno v. Flores*, 507 U.S. 292, the INS is prohibited from keeping children locked up with juvenile criminals for longer than 72 hours. But the agency can do so if the child has been convicted of a crime; or if it believes the child poses an escape risk, is at risk from smugglers, has been disruptive while in the shelter or if the child is "chargeable" with a specific offense.



Happy ending: Edwin Munoz, brought in shackles before an immigration judge, was lucky enough to get a lawyer.

The INS will not comment on the plight of Edwin, or any child specifically. But John Pogash, the acting director of the agency's Juvenile Affairs Division cited the settlement exceptions included in *Flores* in relation to Edwin.

Some advocates complain that the INS uses jails too frequently. The agency denies that, but spokeswoman Karen Krushaar acknowledges that, if shelter care is difficult to find, "sometimes a juvenile is put in a secure place."

When Mr. Sanchez began representing Edwin, the boy had been moved to a juvenile jail because the government had perceived him to be a "problem child." Mr. Sanchez says he doesn't know what this conclusion was based on, but he says that Edwin's experience was traumatic.

"There are some rough kids in there, gang members and wannabe gang members," Mr. Sanchez says. "He had racial problems. He had a hard time surviving because he didn't belong to any particular group."

—ELIZABETH AMON

to NLJ about her complaints about transfer of her children. INS officials have a lot of discretion over the treatment of the children, and she was afraid of retaliation. She worried that her Guatemalan teen wouldn't be moved back to Miami as she requested. She also feared he might be moved to a juvenile jail, where the INS houses up to a third of the detained children, mixing her type of kids with those who have committed violent crimes. The INS, she thought, might even retaliate against her by punishing other kids she's representing.

"It's not that I'm afraid it will happen; I'm confident it will happen," Ms. Kleiser says. Her decision to speak out came after she discovered what she believed was evidence of retaliation simply for her advocacy in general.

That wasn't the INS' story. The morning after she heard from her Guatemalan child-client, Ms. Kleiser spoke to an INS deportation officer who told her the agency had to move the kids because of space problems. But, six days after her young clients had been moved, Ms. Kleiser says, she found during a visit that only 19 of the shelter's 32 beds were filled.

INS denies retaliation

John Shewary, chief of staff for the INS in the Florida district, declined to talk about the specifics of any minor's case.

"The children's welfare and well-being is our foremost concern," he says, "and that concerns their cases, their locations and why we transfer them, if at all."

Mr. Pogash also denied any retaliation. "I think she probably read between the lines," he says. He said that Miami has recently been inundated with Colombian asylum seekers.

Ms. Kleiser is not alone in her allegations. Shiu-Ming Cheer, a Los Angeles lawyer working with detained children, says she thinks the INS retaliates against her and her agency, the Catholic Legal Immigration Network. Ms. Cheer says that after her office began to complain about detained children being mixed in with kids who have been convicted of crimes in juvenile jails, the INS began moving the children to a rural facility in central California, 180 miles north of her office—where no one speaks some of her clients' language, Mandarin. Consequently, she must rent a car and drive three hours each way to make group presentations to kids once a month.

Ms. Cheer thinks her office's objections to the mixing of adjudicated juveniles and children who had never committed a crime was not the only thing that prompted the sudden increase in the transfer of kids away from where there are lawyers.

"We think the retaliation is also just for making known the horrendous conditions in Los Angeles that the detained kids have to suffer through," she says. Her office has complained about the way INS children in juvenile jails are disciplined along with the adjudicated criminals and about the standard of mental health care.

Mr. Holguin says advocates have reported retaliation to him, something corroborated by Ms. Young's organization as well. Both say lawyers are afraid to make formal complaints.

"There is an inherent reluctance by advocates that work in this area to rustle the INS' feathers," says Mr. Holguin. "There's a sense that if one makes trou-

Wendy Young: *Refugee advocate compares the INS policy regarding children to "the fox guarding the hen house."*

ble, the INS will react and the minors will be treated worse than before. That's calculated risk assessment by people who work in the local areas."

Mr. Pogash calls the suggestion that the INS retaliates unfounded. "There are a lot of agency agendas and individual agendas that come to the platform," he says.

Advocates' fears are grounded in the fact that the district manager in each of the INS' 33 districts holds tremendous power. They make several critical

decisions, largely unappealable, governing treatment of children, including whether:

- A child remains in INS custody or is released to family, friends or foster care while in proceedings.

- A child is held in a shelter facility or moved to a juvenile jail.

- A child is transferred—which can mean relocation across the country, away from family and pro bono counsel.

- A child qualifies for a special immigration juvenile visa for those children who are abused, abandoned or neglected.

"I think this is an area rife with due process problems," says Arthur Helton, a

Andrew Morton: *Latham associate is pushing a bill to grant children in INS custody guardians and access to counsel.*

senior fellow at the Council on Foreign Relations and a board member of the American Bar Association's Immigration Pro Bono Development and Bar Activation Project. He says that few lawyers have the resources to take on the larger issues.

That could change with Latham & Watkins' involvement, some observers say. In the meantime, the ABA has provided \$40,000 in matching grants to state and local bar associations to help meet the legal needs of these children. **NLJ**



A CONFLICT OF INTEREST?

Advocate criticizes INS' role as captor, counselor of refugee children



ALONE IN A STRANGE LAND: Child
live Bc

mon
ices
air

NURI VALBONA / HERALD STAFF
ideas who

94

BY AMY DRISCOLL

adriscoll@herald.com

The 6-year-old girl sat alone in immigration court.

No lawyer. No guardian or family. A waif of a child, wide-eyed and newly arrived from Nigeria, sitting in a cramped courtroom at Miami's Krome detention center, where she had been summoned by the U.S. government.

The charge: illegally entering the country.

She slipped into the United States, immigration officials say, like thousands of other children each year who cross borders or land in airports with false immigration papers or none at all. Many are sent by impoverished relatives seeking a better life for the children. Some, including many Chinese children, are smuggled in to work in sweatshops. Others, like Mexican children, actually walk across the border by themselves.

All find themselves under the iron jurisdiction of the U.S. Immigration and Naturalization Service, which assumes complete control of their lives as it seeks to deport them. They are shuttled to shelters all over the country, including one in South Florida called Boystown.

► PLEASE SEE BOYSTOWN, 2L



NURI VALBONA / HERALD STAFF

ADVISOR: Lawyer Christina Kleiser talks with a Boystown resident. She tells the children: 'I can help you.'

Refugee kids a political flash point

Number in U.S. custody keeps climbing, figures show

BOYSTOWN, FROM 1L

More than 4,600 unaccompanied minors who entered the country illegally last year were placed in detention, according to the INS, although refugee groups place the number even higher. The figure has steadily risen in recent years, boosted in part by an increase in organized smuggling of children.

Once detained, such children have the right to speak to an attorney — if they can afford to hire one or if they can locate one who will work for free. The result, advocates contend, are dozens of children deported every year without representation in court.

Wendy Young, staff attorney for the New York-based Women's Commission for Refugee Women and Children, says children should never be in court without a lawyer.

"In some cases, these are truly life-or-death decisions when a child is facing removal to his home country," she said. "To expect a child to go through that process without an attorney — well, the chances of winning are slim to none."

She notes that the Elián González case focused international scrutiny on U.S. policy toward unaccompanied refugee children.

"The Elián case has brought home that there are real defects in the system when it comes to the treatment of children," Young said.

Her commission will issue a report this summer assessing conditions at two South Florida INS facilities: Boystown, where children are held, and the Krome detention center, where adult refugees are held.

The report, based on a visit in March, will cite overcrowding at Krome and inadequate legal representation and poor translation as problems at Boystown. More fundamentally, Young said, it also will address whether the INS should serve as both captor and counselor for unaccompanied minors.

"There is an inherent conflict of interest. INS is first and foremost a law enforcement agency, not a child welfare agency," she said. "The same agency that is charged with caring for the child is seeking to remove the child from this country."

To help these children, two Florida lawmakers have introduced bills in Congress that would provide each child with an independent advocate. Nationally, 21 percent of juveniles detained are deported within days, INS spokeswoman Maria Elena Garcia said. And even those released to friends or relatives in the U.S. face proceedings that may result in deportation.

A recent nationwide study by a Georgetown University professor found that illegal immigrants are four to six times more likely to be granted U.S. asylum when they are represented by lawyers.

For now, the fight to stay in the United States becomes something of a David-and-Goliath contest for many children, pitting the small voice of a child against the might of the INS.

Enter Christina Kleiser, a lawyer for the Florida Immigrant Advocacy Center, who represents many of these children for free. Her clients come from all over the world. Often, Kleiser stumbles across new clients when they are already in court, alone and unrepresented.

Like the Nigerian girl, Kleiser happened to be in court representing another child, a 15-year-old Guatemalan boy, when she saw the girl.

"She had this scared look, like she didn't know what was happening," Kleiser said.

The judge asked whether the child had a lawyer present. No one responded. The little girl sat there alone. The judge looked at Kleiser. Another new client.

'INS is first and foremost a law enforcement agency, not a child welfare agency.'

— WENDY YOUNG, attorney

The girl had been held at Boystown, the only INS facility in Florida for unaccompanied refugee children. Used in the 1960s as a shelter for Cuban children in Operation Pedro Pan, the secret exodus that brought thousands of unaccompanied Cuban children to the United States, the facility is now run by Catholic Charities under contract to the INS.

CAMPUS IN SOUTH DADE

Squat yellow buildings home for changing group of 32 boys, girls

On a campus in Southwest Miami-Dade County near West Kendall, the squat yellow buildings serve as temporary home to an ever-changing group of 32 boys and girls.

In the year that Kleiser has been working at Boystown, the rights of refugee children have become a political flash point. The number of unaccompanied minors in U.S. custody keeps climbing: In 1997, there were 2,770 refugee children in INS custody. Last year, the number had jumped to 4,607, according to INS figures.

INS officials estimate only about 100 children a year go through immigration court without legal representation, although Kleiser and other advocates believe the number is much higher.

Garcia said the INS informs children of their legal rights in several ways. They are given a fact sheet listing their rights when they are first detained. Immigration judges double-check in court that the children understand their rights.

And the INS relies heavily on the Florida Immigrant Advocacy Center, the non-profit Miami-based organization that employs Kleiser.

"These are children and we want to be sure they are fully informed," Garcia said.

But Florida lawmakers don't think these steps are enough. U.S. Sen. Bob Graham and Rep. Alcee Hastings, both Democrats, are proposing new laws that would give unaccompanied minors more access to the legal system, with child-welfare workers appointed to help the children navigate U.S. immigration laws. Hastings said the proposed legislation would protect "the most vulnerable immigrants to our country."

"If a child comes to this country without a parent or legal guardian, they could be swallowed almost without notice by the INS," Hastings said. "This must not continue to happen."

Hastings said he's not optimistic about passing a law this year, but he and Graham plan a renewed attack in 2001.

Nationwide, legal representation for unaccompanied refugee children has become such a concern that the Executive Office for Immigration Review, part of the U.S. Justice Department, has endorsed a pilot program in Arizona that will ensure that all children in INS custody get a lawyer there. If successful, the program — set to begin in the fall — may be replicated around the country.

The full-time children's attorney will be paid by a coalition of legal organizations and likely handle about 500 cases a year. The program also hopes to provide a child welfare professional in each case, to make sure the best interests of the child are considered.

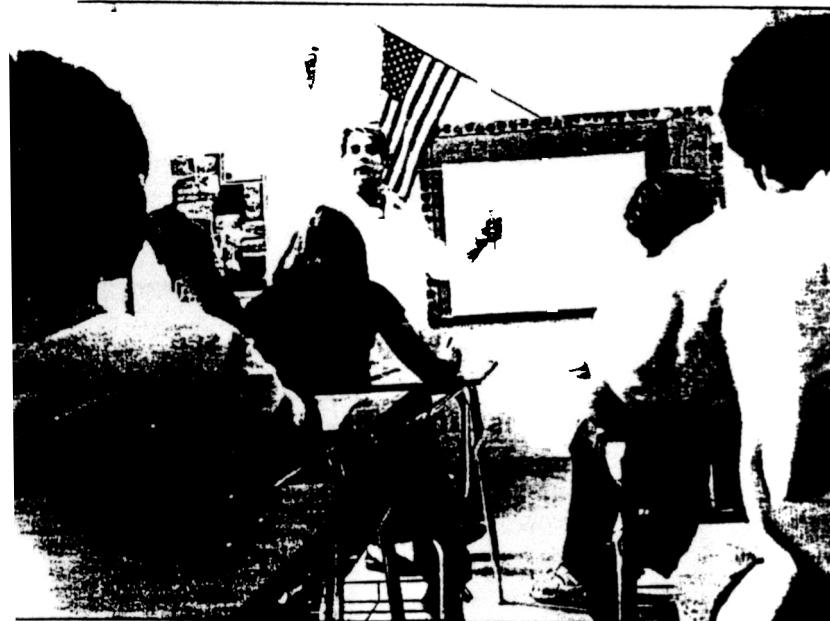
"The failure to address the needs of children has meant that many of them are churned through the process without anyone stopping to find out what's in the best interest of the child," said Chris Nugent, executive director of the Florence (Ariz.) Immigrant and Refugee Rights Project. "Sometimes, that's returning to their homeland, but sometimes it's not."

7-30-00
2L
2 of 4



NURI VALBONA / HERALD STAFF

PASSING THE TIME: Two unaccompanied boys play catch with an immigration official at the Boystown gym in Southwest Miami-Dade County. At Boystown, all 32 beds are usually full. Administrators say they are considering increasing the number to 40.



NURI VALBONA / HERALD STAFF

LESSON ABOUT AMERICA: Luisa Gonzalez teaches her Boystown class all about Memorial Day. The students are unaccompanied immigrant children, some of whom face the legal process alone.



NURI VALBONA / HERALD STAFF

HELPING HAND: Dalys Martinez, a house parent at Boystown, talks to a 6-year-old who has been at the facility for several weeks.

At Boystown, all 32 beds are usually full. Administrators say they are considering increasing the number to 40.

The children are given clothes, food and a bed to sleep in. They are taught English and a little American history as they wait for word on their immigration status.

The average age is 12, though the facility accepts children from toddlers to age 17. Their average stay is 16 days but many remain much longer, sometimes for months. Signs listing the house rules are written in Creole, Spanish,

English and Chinese.

Access to legal services comes in the form of a sheet of paper printed with the names of groups that do pro bono work. The list is in English. They must rely on the INS to supply translators and social workers to help the children make the calls for legal assistance.

INS officials say they have no option except to enforce the law: "If Congress chooses to authorize the expenditure of funds for [attorneys], then

we'd do so," said Russ Bergeron, INS spokesman. "But it's not our decision to make."

Some children have relatives in this country who hire lawyers for them. But poor children are on their own. It is fully possible for a child to be deported before ever having talked with a lawyer, according to Cheryl Little, director of the Florida Immigrant Advocacy Center.

"No doubt some of these children are just falling through the cracks," she said.

7-30-00
24
3074

"If we don't stumble across them, chances are they are deported without ever having their day in court, without meaningful inquiry into their status."

LEGAL HELP

Lawyer starts program to explain rights to children

That's what worries Kleiser the most. So she has begun regular children's rights presentations at Boystown for all new arrivals.

"My name is Christina and I am a lawyer," she tells a group of children gathered in a Boystown classroom.

Spanish-speakers are gathered on one side of the dimly lit room, Creole-speakers on the other. The Chinese children await in a separate classroom. As she speaks, her words are translated — in Spanish, she is "un abogado," in Creole, "yon avoka."

Not everyone is interested. Some look out the window. Others are cut-ups, offering obviously false responses to her questions.

"How many times have you been to court?" she asks a Guatemalan boy who has sat through her presentation before.

"Twelve times!" he says loudly, in Spanish, winning laughs from half the room.

Kleiser grins, pushing ahead. On the chalkboard, she draws a small sailboat with a stick figure on the deck.

"This is you," she tells the children, pointing to the stick figure.

Then she draws a rough outline of the state of Florida, with a darkened circle at its tip, for Boystown.

"No matter where you came from, or how you got here, you can have a lawyer to help you with your immigration case," she says. Across the room, Creole and Spanish versions of her words echo.

The children, sitting in chairs labeled "unaccompanied minors program," look dubious. One Haitian child sleeps, head on a desk.

Kleiser continues. "If you do not have a lawyer, I can help you. I can be your lawyer."

She hands out her cards. Behind her, a poster with the Pledge of Allegiance proclaims: "... with liberty and justice for all."

Kleiser's drive to represent these children is fueled by her memory of another client's case. It's the case that haunts her, the one that pushes her to work through holiday weekends and late into the night.

That time, it was a Salvadoran boy, 17.

He was taken to Boystown and issued a notice to appear in immigration court. The government wanted to send him back to El Salvador.

He tried to file his own appeal. With the clock ticking, it was returned to him stamped "incomplete." He had sent in blank forms, not knowing he must fill them out.

That's when Kleiser got a call.

"I visited him, tried to give him hope and reassurance. I told him we would help him file an appeal," she said.

But help had come too late. A few days later, overcome by fears of repatriation, he ran away from Boystown. He slipped into a shadow society of illegal aliens, consigned to a life without rights, without benefits.

"I don't want that to happen again," Kleiser says. "That's my goal in life."

Her attention returns to the 6-year-old girl from Nigeria. The girl's mother is in the United States, but doesn't want her child, Kleiser says.

So Kleiser has asked the INS to send the matter to juvenile court where the girl can be declared abused, abandoned or neglected. That would clear the way for a special juvenile visa and allow her to be placed in foster care.

Even if the girl's case has a happy ending, Kleiser's work is far from done.

"I just heard about a 1 1/2-year-old in INS custody," she says, with a rueful laugh. "I told them I'd take the case, of course."

4.30.00

26

4 of 4

OPINION

JOHN S. KNIGHT (1894-1981)

The Miami Herald

JAMES L. KNIGHT (1909-1991)

ALBERTO IBARGÜEN PUBLISHER • TOM FIEDLER EDITORIAL BOARD EDITOR

THE LITTLEST REFUGEES

NEED BETTER PROTECTIONS

Just think how daunting, and confusing, going to court for a traffic ticket can get. Then imagine you are 6 years old, alone, in a strange country whose language you don't understand and you are placed in front of an immigration judge who will determine the course of your life.

That exactly is the situation of the 6-year-old Nigerian girl detailed in yesterday's report by Amy Driscoll in The Herald's Focus section, *A conflict of interest? Advocates decry INS's role as captor, counselor of refugee children*. It's also a story repeated across America, where thousands of unaccompanied foreign children are sent or run to each year.

Their reasons for coming are many. Some flee war, disaster or abuse at home. Some are sent to work or are sold into slavery. They come from all over the world. Even by conservative INS figures, upwards of 4,600 of them landed in Immigration and Naturalization Service detention last year — some unconscionably put in facilities for criminal juveniles.

In one extreme case last year, a 15-year-old Chinese girl spent seven months in a Portland, Ore., juvenile jail, and was held for weeks after she had been granted asylum. In other cases, the INS ships unaccompanied kids to shelters such as Boystown, a West Kendall facility run by Catholic Charities.

At Boystown children are well fed, protected and even get classes in English and American history. But there is a funda-

The agency that cares for them is also charged with deporting them.

mental problem: The agency that cares for them is also charged with deporting them. As Wendy Young, staff attorney for the Women's Commission for Refugee Women and Children, points out, the INS is not a child-welfare agency.

The INS says it informs children at Boystown of their rights by giving them a fact sheet in English. But the truth is that without language skills, an attorney or other advocate, the chances are slim that children would be able to navigate the complicated immigration maze and avoid deportation — even though the law may be on their side. That's why the Women's Commission, which visited Boystown in March, cited lack of access to legal counsel and poor translation as problems.

The Florida Immigrant Advocacy Center and its lawyer Christina Kleiser must be saluted for representing many Boystown kids for free. But FIAC can't do it all.

Thankfully U.S. Sen. Bob Graham and Rep. Alcee Hastings, both Democrats, have proposed legislation that would see a child-welfare expert assigned to each child and would improve their access to lawyers. These are the least protections merited by the most vulnerable refugees.

they

Ma

Ic
Polic
Read
prost
wher
prost
clean
He
deco
dure:
who
help
alert:
speal
she r
woul
unne

Cr

T
Expe
tain'
look
you
save
ance
of a
upb
you

EDITORIAL BOARD

NANCY ANCRUM • SUSANA BARCIELA • ROBERT G. BEATTY • ZULAY DOMÍNGUEZ CHIRINOS

An incredible INS vs. a truthful teen

He looks so frail and defenseless, his face so small and thin. Repeatedly, he rubs his hands over his big eyes . . . as if to wipe away the memories of war, separation and slaughter.

Jama Abdul-Khare Abshir fled his native Somalia and landed in Miami in December. Now he's locked up at the Immigration and Naturalization Service's Krome detention center, where he talked to me across a plexiglass panel. Yet even this is improvement.

"The treatment I am receiving is better now than before," he says, comparing his stay at Krome to life in Somalia.

Here he can shower twice a day and — he looks surprised — eat three meals. Alone and working odd jobs to survive in Mogadishu, Abdul — the name he goes by — was lucky to shower every two weeks and eat once on a good day. Worse was the constant threat of violence in his war-torn homeland.

His description: "People fighting according to clan, everybody an enemy, anything can happen."

The State Department's description: "Somalia has been without a central government since its last president, dictator Mohamed Siad Barre, fled the country in 1991. Subsequent fighting among rival faction leaders resulted in the killing, dislocation and starvation of thousands of persons. . . . Abuse and discrimination against eth-

He has suffered incomprehensible loss and trauma.

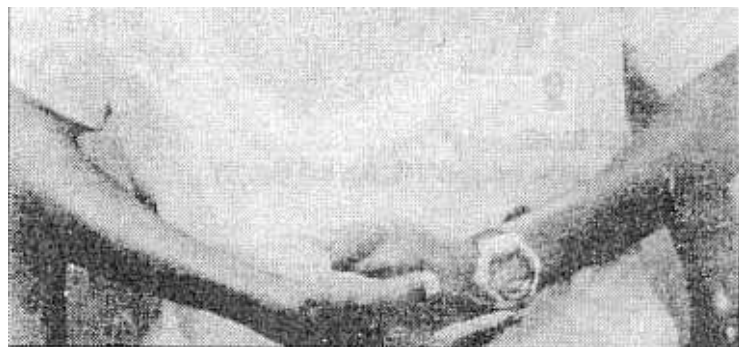
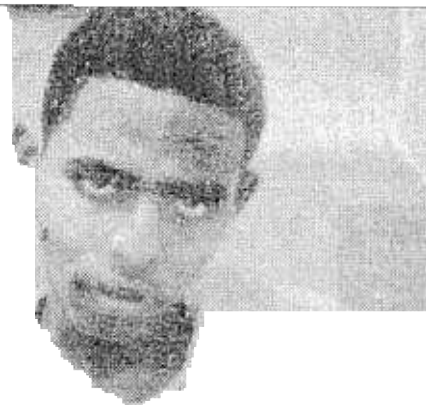
nic minorities in the various clan regions continued."

For Abdul, the consequences were clear. "I used to live in fear," he says. Now, at Krome, he is safe, like a bird in a cage. But I fear for his uncertain future: Somehow Florida's INS district decided that Abdul is not credible. I have read the INS's reasoning in court documents. I find the INS incredible.

Sitting across from me in his orange jump suit, Abdul shivers in the cold interview cubicle. He tells me how hard it is to be alone, how he can't stop thinking about his brothers, wondering what kind of life they might have. His face shows his distress. He is sincere. Clearly he has suffered loss and trauma that most of us privileged Americans would find incomprehensible.

Consistently Abdul has repeated the main, and saddest parts of his story: At age 8 in 1990, he and his father were separated from his mother and two younger brothers when war broke out in Somalia and then spent years searching for them in refugee camps from Somalia to Kenya. In 1996, at age 14, he survived an attack by bandits who killed his father and 10 other travelers. Those alive had no time to bury the dead before fleeing. He has been alone since.

Abdul washed dishes in a restaurant in Mogadishu and cleaned trucks to earn his keep. His father had the foresight to pay tutors so that Abdul could learn English. Obviously Abdul is smart and resilient. Though



Jama Abdul-Khare Abshir fears deportation to his native Somalia

he does tell of times when he was badly burned in the restaurant and attacked by thugs questioning his clan and thought briefly of suicide.

A caseworker from the Child Protection Team of the University of Miami Medical School found Abdul "a bright and articulate 17-year-old boy who has been through incredible turmoil in his homeland of Somalia. Abdul appeared truthful in his statements. He was open and forthcoming during his interview."

Yet the INS didn't believe him. It found "insufficient" evidence that he couldn't reunite with his parents or substantiate his identity or age — even though no reliable public records exist in Somalia or in the region's refugee camps, as two cousins who live in the United States vouched for Abdul.

Thus the INS denied the consent required by law for

him to go to dependency court — though for Abdul to have a shot at legal status here (through a special juvenile-immigrant process), he would have had to prove to that court that he was a minor and had been abused, abandoned or neglected — and the INS would have had the final say.

The INS couldn't even conclude that dependency court was in Abdul's best interest — even though the INS couldn't deport him if it had a court order to do so. Because, of course, Somalia has no government to issue him travel documents. Just what we need, another "lifer" at Krome.

Represented by lawyers from the Florida Immigrant Advocacy Center, Abdul will seek asylum. He told me he came to the United States for "protection and a bright future."

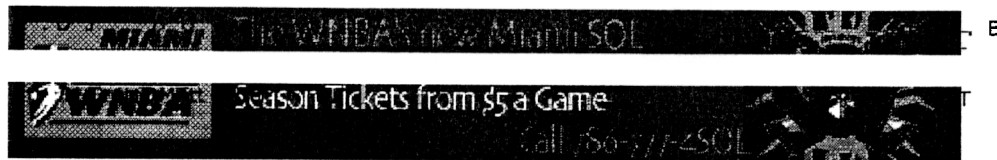
May God help him find it.
sbarciela@herald.com



SUSANA
BARCIELA

EDITORIAL
BOARD

Miami Herald 3/10/00



Sun-Sentinel.com

[Home](#) [News](#) [Sports](#)
[Entertainment](#)
[Classified](#)
[Business](#)
[Shortcut to...](#)
[GO!](#)

Weather

CURRENTLY

\ 1/2

Humidity 60%

TODAY'S FORECAST

79°, Partly Cloudy

TOMORROW

Partly Cloudy

High: 72°, Low: 61°

► [More weather](#)

► [Hurricane Central](#)

More News

► [South Florida](#)

► [Broward](#)

► [Palm Beach](#)

► [Miami-Dade](#)

► [Florida](#)

► [World/National](#)

► [Business/Technology](#)

Campaign 2000

► [On the campaign trail](#)

► [Scuttlebutt](#)

► [The candidates](#)

► [Local Politics/Nevins](#)

Today's News Poll

Who's to blame for high gas prices?

read the latest story and talk about it on our message board.

Oil-producing countries (61%)

The U.S. government (23%)

People in

Somalian teen sent to Krome

80°, Partly Cloudy,

By JODY L. BENJAMIN, Sun-Sentinel

Web-posted: 11:55 p.m. Feb 18, 2000

It was not the outcome Abdul Kheir Jama Abshir and his lawyers had hoped for.

Hours after a federal judge ruled against him on Friday, the wiry teen-age Somalian refugee found himself transferred from a juvenile center to join 600 adult inmates at Krome Detention Center.

That's because, in addition to the judge's adverse ruling, a dental exam administered by the Immigration and Naturalization Service found that Abshir may be older than he claims. The teen, who says he turns 18 today, found that his word alone was not enough.

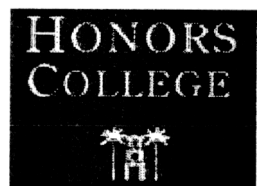
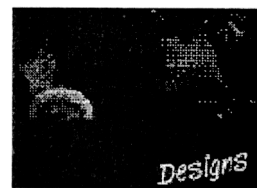
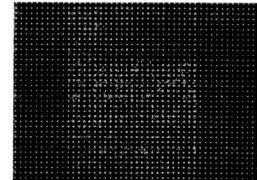
"Life is like a puzzle and unfair to every human being," Abshir wrote in a statement distributed by his lawyers. "Everybody should be able to work it out. Although I was ready to do so, my life is in a total eclipse. ... Only death can make me forget my problems."

Lawyers from the Florida Immigrant Advocacy Center disputed the findings of the dental exam, saying it was not an accurate way to determine a person's exact age.

"What child carries evidence with him to corroborate his age?" said attorney Christina Kleiser. "We have no reason not to believe him. He is a child. He does not belong in Krome."

They had hoped U.S. District Judge Alan Gold would allow the case to go before a state family court judge on Friday. A special program for unaccompanied refugee minors allows them to be placed in foster care.

But Gold found that his court did not have jurisdiction in the case and that INS had not acted improperly when it refused Abshir's request. The decision means Abshir must



shopping@
sun-sentinel.com

Pick a city and shop:

[Broward East](#)

[Fort Lauderdale](#)

[Lauderdale-by-the-Sea](#)

[Oakland Park](#)

[Wilton Manors](#)

[Broward Northeast](#)

[Deerfield Beach](#)

[Lighthouse Point](#)

[Pompano Beach](#)

[Broward Northwest](#)

[Coconut Creek](#)

[Coral Springs](#)

[Margate](#)

[North Lauderdale](#)

[Parkland](#)

[Tamarac](#)

[Broward Southeast](#)

those gas- (13%)
hogging
SUVs

☐ I don't (1%)
know

Total votes: 290



pursue an adult's political asylum claim instead.

In his 23-page decision, Gold repeated the INS' belief that Abshir paid a smuggler to get to the United States, noting that he had no documentation, no airline ticket and no recollection of which airline he had traveled on.

The teen, who said he watched robbers shoot his father dead, somehow fled his war-torn country for Holland, then flew to Miami. A member of the minority Madiban clan, Abshir said he has not seen his mother and brothers since civil war broke out in Somalia in 1990, when they went into hiding.

Abshir has cousins in California and Minnesota and may have been seeking to reunite with them.

In an odd twist, the INS decision recommending that Abshir be put into deportation proceedings was made by Mariano Faget, the high-ranking INS supervisor who was arrested in Miami on Thursday on charges of spying for the Cuban government.

Faget was the INS section chief in charge of or green card applications. He signed the preliminary order denying Abshir a chance to go before family court because his supervisor was out of town.

Still, Abshir's attorneys tried to use the arrest to question the INS decision, saying in a release it "raises further questions about INS's decision in this case."

INS officials denied that Faget's involvement with the Somali boy's case tainted its outcome.

"Not every case that Mr. Faget looked at needs to be reviewed," said INS spokeswoman Maria Elena Garcia.

Jody A. Benjamin can be reached at jbenjamin@sun-sentinel.com or 954-356-4530

[Dania Beach](#)
[Hallandale](#)
[Hollywood](#)
[Pembroke Park](#)
Broward Southwest
[Cooper City](#)
[Davie](#)
[Miramar](#)
[Pembroke Pines](#)
[Weston](#)
Broward West
[Lauderdale Lakes](#)
[Lauderhill](#)
[Plantation](#)
[Sunrise](#)
Palm Central
[Boynton Beach](#)
[Greenacres](#)
[Lake Worth](#)
Palm South
[Boca Raton](#)
[Delray Beach](#)
[Reference Map](#)

Sun-Sentinel.com

Sun-Sentinel.com

WORLD WIDE WEB SEARCH


[Questions or comments?](#) | [Paid archives](#) | [Message boards](#)
Copyright 1999 Sun-Sentinel Co. & South Florida Interactive, Inc.

Breaking News
FROM A.P.

The New York Times
ON THE WEB

Home Site Index Site Search Forums Archives Marketplace

12 Florida Offices \$7 Trades
Scottrade.com



February 18, 2000

Judge Stays Out of Immigration Case

A.P. INDEXES: [TOP STORIES](#) | [NEWS](#) | [SPORTS](#) | [BUSINESS](#) | [TECHNOLOGY](#) | [ENTERTAINMENT](#)

Filed at 1:58 p.m. EST

By The Associated Press

MIAMI (AP) -- Confronting one of the same legal issues of the center of the Elian Gonzalez case, a federal judge refused on Friday to get involved in the case of 17-year-old boy fighting deportation to Somalia.

U.S. District Judge Alan Gold ruled he lacks jurisdiction to help the teen-ager, who is known in court only as Abdul and claims to know of no relatives left alive in his homeland. Abdul had asked the judge to order that his case be heard in state court.

The judge said that even if he had legal authority to intervene, the Immigration and Naturalization Service acted properly in deciding to send the teen-ager back to Somalia despite his fears about returning.

The question of jurisdiction also figures in Elian's case, which will be argued on Tuesday before a different federal judge.

Abdul flew into Miami by himself on Dec. 23. He has said that he and his father were separated from his mother and two brothers by war in 1990, and he told INS officials he saw his father killed by bandits in 1996

He wanted a state court to declare him a ward of the

6 M
FI
OF Y
\$
VA

DI
IN

6 M
FI
OF Y
\$
VA

DI
IN

Ad

state and let him remain in the United States on the grounds of abandonment by his parents.

But federal prosecutors argued that allowing anyone but the INS to decide the boy's future would "thwart the intent of Congress."

Cheryl Little, one of Abdul's lawyers, said that because of Friday's ruling -- and because Abdul turns on 18 on Saturday -- he will have to pursue a political asylum claim instead, the usual route taken by adults who arrive in this country.

"It's a much higher burden," Little said. "It's much more difficult for him to win his case because he has to prove he has a well-founded fear of persecution upon his return to Somalia."

After the ruling, an INS dentist examined Abdul and concluded from his teeth that he is an adult already subject to INS rules governing them. Abdul was allowed to get his belongings from a juvenile center where he had been staying and was transferred to an INS detention center for adults.

Mariano Faget, an INS official arrested Thursday on suspicion of being a Cuban spy, was the one who denied Abdul's requests to remain in this country. But the judge said the arrest had no bearing on Abdul's case.

U.S. officials said Faget played no role in deciding Elian's case.

Ask questions, give answers and tell other readers what you know. Join [Abuzz](#), a new knowledge network from The New York Times.



12 Florida Offices **\$7 Trades** 
[Scottrade.com](#)

[Home](#) | [Site Index](#) | [Site Search](#) | [Forums](#) | [Archives](#) | [Marketplace](#)

[Quick News](#) | [Page One Plus](#) | [International](#) |

[Technology](#) | [Science](#) | [Sports](#) | [Weather](#) | [Editorial](#) | [Op-Ed](#) | [Arts](#) |
[Automobiles](#) | [Books](#) | [Diversions](#) | [Job Market](#) | [Real Estate](#) | [Travel](#)

[Help/Feedback](#) | [Classifieds](#) | [Services](#) | [New York Today](#)

Copyright 2000 The New York Times Company

The information contained in this AP Online news report
may not be republished or redistributed
without the prior written authority of The Associated Press.

GIVE ABDUL THE BENEFIT OF THE DOUBT

When Jama Abdulkare Abshir turns 18 on Saturday, hope that he has something to celebrate. A native of war-torn Somalia, he could well qualify for U.S. legal status. But Immigration and Naturalization Service District Director Robert Wallis so far refuses to give him a fair chance.

The teen, who goes by Abdul, says he was separated from his mother by war in 1990 and lost his father to killer bandits later. Surviving refugee camps and life alone, he flew to Miami in December where he was taken into INS custody.

If a juvenile court were to find Abdul

abused, abandoned or neglected by his parents, he could qualify for U.S. residency under special "immigrant juvenile" provisions — as long as he wasn't yet 18.

Unreasonably, Mr. Wallis has refused to consent to juvenile-court jurisdiction, though INS policy itself would instruct him to do so — another example of how the INS overlooks the best interests of children.

Today Abdul is asking a federal judge to order the needed consent. If this INS district remains uncaring, the judge must not be.

“I running out of hopely...”

Profiles of Children in INS Detention in Florida



© Alon Reininger/Contact Press Images

Miami, Florida
October 2002

Prepared by: Charu Newhouse al-Sahli, Chris Kleiser and Cheryl Little

The title of this report, “I running out of hopely...” is a direct quote from a letter FIAC received from a detained child, Ernst, regarding his experience in INS custody.

*Cover Photo by Alon Reininger/Contact Press Images:
Undocumented Mexican children apprehended by U.S. Border Patrol.*

Acknowledgements

FIAC is extremely grateful to the Florida Bar Foundation, the American Bar Association's Immigration Pro-Bono Development and Bar Activation Project, the Ethel and W. George Kennedy Family Foundation, the Joseph H. and Florence A. Roblee Foundation, Reebok Human Rights Foundation, Citibank, and Citigroup Foundation without whose support this report would not have been possible.

Lisa Frydman, who has been awarded a NAPIL Equal Justice fellowship to continue her advocacy work for children in INS Custody, deserves FIAC's deepest appreciation for her hard work on this report. FIAC also wishes to recognize the important contributions made by Jenny Torres and Jennie Santos. We also wish to thank Sharon Ginter and Melissa Morales, who worked tirelessly with infinite patience on this report.

FIAC is especially appreciative of the tremendous help provided by the law firm of Shook, Hardy and Bacon, the Florida Justice Institute, Florida Legal Services, the South Florida Chapter of the American Immigration Lawyers Association, and all the individual volunteer attorneys who have provided *pro bono* representation to children in INS detention.

Finally, FIAC wishes to thank the children who are the subject of this report for their profound courage and spirit, and for the privilege of representing and knowing them.

Florida Immigrant Advocacy Center

The Florida Immigrant Advocacy Center, Inc. (FIAC) was founded in January of 1996 in anticipation of the drastic changes in the availability of legal services to immigrants due to federal funding restrictions on Legal Services Corporation. FIAC's mission is to protect and promote the basic human rights of immigrants of all nationalities through direct legal services and impact advocacy efforts.

FIAC has represented unaccompanied children in detention since late 1999. FIAC's Children's Legal Project provides *pro bono* legal representation to all unaccompanied children in detention in South Florida who do not have an attorney. FIAC also conducts bi-weekly Know Your Rights presentations for children in INS custody. FIAC advocates for the rights and needs of the individual children it represents, as well as for improved immigration policies for all children in INS custody.

For further information contact:

Cheryl Little
Executive Director

Christina Kleiser
Supervising Attorney

Charu N. al-Sahli
Detention Coordinator

Florida Immigrant Advocacy Center, Inc.
3000 Biscayne Boulevard, Suite 400
Miami, FL 33137
Tel: (305) 573-1106
Fax: (305) 576-6273

Table of Contents

Executive Summary	1
Gabriel	7
Fega	9
Abdul Kher	11
Baby Margaret	13
Ping Lei	15
Alfredo	16
Ernst.....	20
Emmanuel, Patrick and Frantz	22
Leonie	24
Conclusion and Recommendations.....	25
Index of Attachments	27

Executive Summary

It is estimated that children under the age of eighteen¹ account for as many as half of the world's refugees.² Each year, thousands of these children arrive in the United States. Children have increasingly become victims of persecution and human rights violations such as genocide, forced military recruitment, female genital mutilation, child labor and exploitation in their home countries. Like adults, many of them flee war and political upheaval. Some children have been forced to leave their homes because their families abused, abandoned or neglected them. Frequently these children are targeted in their home countries because they've been forced to live on the streets. Still others are victims of severe forms of trafficking, and have been smuggled to the United States for such illicit purposes as forced prostitution.

While each child's story is unique, they all share an incredible vulnerability upon arrival in the United States. They arrive not only traumatized by what they have experienced in their home countries, but also by the circumstances of their flight and separation from their families.

In 2001, the U.S. Immigration and Naturalization Service (INS) apprehended and detained approximately 5000 children, triple the number since 1997.³ As a law enforcement agency, the INS is responsible for the children's apprehension, detention and deportation. Ironically, this very agency is also charged with the children's care, placement and protection. The INS' clearly conflicting roles with children in its custody have led to a disturbing pattern of treatment where the law enforcement interest of the agency frequently supercedes the best interest of the child.

Detention is especially terrifying for children who are unable to comprehend the complex immigration system in which they find themselves. Moreover, INS holds approximately one-third of children in its custody in juvenile jails, at times alongside violent juvenile offenders. Because they are not in criminal proceedings, children in INS custody – unlike juveniles accused of committing a crime – are not entitled to a free attorney. The American Bar Association estimates that over half of the children in immigration proceedings are without an attorney. This is of particular concern given a recent study by Georgetown University, which found that if an adult asylum seeker does not have an attorney, she is four to six times more likely to be denied asylum.⁴ Imagine, then, what it must be like for children in INS custody, most of whom do not speak English, have a limited education, and are not adequately informed of their legal rights. Indeed, many children are simply unaware of their potential eligibility for relief from deportation and end up losing hope and agreeing to be returned to their home country.

The United Nations High Commissioner for Refugees (UNHCR) recommends that an independent and formally accredited organization appoint a guardian or adviser as soon as the unaccompanied child is identified. Canada, Luxemburg, the Netherlands, Sweden, Norway, and Spain all automatically appoint guardians *ad litem* to unaccompanied children. A child's guardian ensures that the child's best interests are addressed throughout the course of her detention. Although parents' rights may be fundamental, in some cases a parent's wishes may be contrary to a child's need for protection. In dependency hearings in juvenile court, for example, states provide children and parents with separate attorneys to ensure that children's true best interests are represented. Unaccompanied children in INS custody are especially in need of guardians *ad litem* because they do not know who to trust and frequently have no one to represent their best interests. INS officers, judges, INS lawyers, *pro bono* and private attorneys, and detention center staff all communicate with the children and ask them questions. The same INS Deportation Officer who recommends their deportation and may eventually deport them plays basketball with them at the unaccompanied children's shelter. Children are often extremely confused about who plays what role in determining their future and are unable to understand who is acting in their best interest.

¹ The UN Convention on the Rights of the Child (CRC) defines a child as any person under the age of 18. Every country in the world, except Somalia and the United States, has ratified the CRC.

² United Nations High Commissioner for Refugees (UNHCR).

³ INS' Office of Juvenile Affairs, Immigration and Naturalization Service Fact Sheet, August 1, 2002, p. 3.

⁴ *Asylum Representation*, Summary Statistics, prepared by Dr. Andrew I. Schoenholtz, Director of Law and Policy Studies, Institute for the Study of International Migration, Georgetown University, May 2000.

In *Flores v. Reno*, the Supreme Court ruled that unaccompanied children cannot be detained in the same types of facilities as adults and that our government should be mindful of the needs of this unique group of INS detainees.⁵ In 1996, after nine years of federal litigation regarding the treatment of unaccompanied children in INS custody, a stipulated settlement agreement was reached (hereinafter *Flores* agreement)⁶ which requires that unaccompanied children be placed in the least restrictive setting and sets other minimum standards for INS' treatment of children, such as that they be treated with "dignity, respect, and special concern for their vulnerability."⁷ Unfortunately, despite this agreement, the INS has been unable to appropriately balance both its enforcement and caregiver roles and lacks the child welfare expertise necessary to appropriately address the needs of children in its custody. Furthermore, national INS policy is often at odds with actual INS practice in local INS Districts, such as the Miami District, as this report will show. Little oversight of the implementation of the *Flores* agreement has occurred to ensure the agency's compliance with its requirements.⁸

The U.S. Department of Justice's Office of the Inspector General (OIG) investigated INS' compliance with the *Flores* agreement last year and documented systematic violations by the INS. More specifically, the OIG notes that in South Florida the Juvenile Coordinator (an INS Deportation Officer) handles an adult caseload in addition to the children's cases for which he is responsible and that, "[g]iven the size of the [Miami] District's detained juvenile caseload, this arrangement does not appear adequate for handling the juveniles."⁹ The OIG also notes that the Juvenile Coordinator was in violation of INS policy because he "routinely picked up unaccompanied juveniles of the opposite sex for transport without a second officer."¹⁰ Additionally, the OIG found that the Miami Border Patrol Sector used facilities to house unaccompanied children overnight that the Juvenile Coordinator/Deportation Officer was unaware of and had never inspected:

"When we informed the district juvenile coordinator of this situation, he stated he did not see a problem with the Border Patrol housing unaccompanied juveniles overnight in these facilities without his knowledge. We disagree. It is the juvenile coordinator's responsibility to know about juveniles being held in custody in the jurisdiction of the district and to know where the juveniles are housed."¹¹

The OIG concluded that such "deficiencies [in care] have potentially serious consequences for the well-being of juveniles."¹²

In 2000, Miami, Florida was one of the top five locations where the INS apprehended unaccompanied children.¹³ Last year in Florida, the INS used at least three facilities to detain immigrant children: 1) a thirty-two bed INS juvenile detention facility known as Boystown located in Miami, FL and operated by the Catholic Charities Unaccompanied Minors Program; 2) local hotel rooms at a Comfort Suites Hotel in Miami, FL; and 3) the Monroe County Jail, an adult criminal offenders jail in Key West, FL. The Florida Immigrant Advocacy Center (FIAC) has represented children detained at each of these locations. The children have ranged in age from infants to teenagers, and come from all regions of the world.

Over four hundred children were placed at Boystown in 2001. The Boystown shelter offers an institutional environment often referred to as "soft" detention, where the children sleep in small, shared rooms, have

⁵ *Flores v. Reno*, 507 U.S. 292 (1993).

⁶ *Flores v. Reno*, No. CV 85-4544-RJK (C.D. Cal. 1996).

⁷ *Ibid.*

⁸ Most children's attorneys and non-profit agencies concerned with the treatment of children in INS custody lack the resources to file complaints in federal court, which has allowed INS to largely monitor its own compliance with the *Flores* agreement.

⁹ *Unaccompanied Juveniles in INS Custody*, Office of the Inspector General, US Department of Justice, Report Number I-2001-009, September 28, 2001 (hereinafter, OIG Report), Chapter 3, p. 3.

¹⁰ OIG Report, Chapter 2, p. 9.

¹¹ OIG Report, Chapter 3, p. 2.

¹² OIG Report, Chapter 1, p. 6.

¹³ OIG Report, Appendix III, p. 2.

educational classes and recreational activities, and are frequently taken on field trips outside the facility. While the children are monitored and not allowed to leave the premises alone, the Boystown staff is generally very affectionate and caring toward children detained there. Children frequently confide in Boystown staff, who they spend most of their time with and often become attached to, and sometimes share sensitive information with them regarding their cases, which they assume will stay confidential. However, because Boystown is an INS contract facility, the INS has complete access to the children's files and has used such information against the child.

An unknown number of unaccompanied children have been placed at the local hotel, where they live in almost complete isolation.¹⁴ The INS has not responded to FIAC's requests to be informed of any children placed at the hotel in order to provide legal orientations and determine whether they need legal representation.¹⁵ Neither the children's families nor their attorneys may visit them at the hotel, where they have no activities, no educational services, and no recreation. For a legal visit, FIAC must request a child be brought from the hotel to Krome, an adult INS Service Processing Center, 24 hours in advance. Even given prior notice, the children are often not brought on time, sometimes miss meals in order to have legal visits, usually spend hours waiting in processing to be transported back to the hotel after visits, and on at least one occasion the wrong boy from the hotel was brought to Krome. The only time a child detained at the hotel can breathe fresh air is when she is taken to Krome for court or visitation, an infrequent occurrence. A number of children have reportedly gone weeks, and even months, without a change of underwear at the hotel.

FIAC is aware of at least two children last year who were housed at the Monroe County Jail. This jail is clearly not the "least restrictive environment" where INS should place children, in accordance with the Flores agreement, and is a facility completely incapable of meeting the special needs of a vulnerable child.

Detention has a profound impact on a child's ability to develop relationships with others and on their sense of stability, making transfers to other facilities all the more devastating. The INS has transferred a number of FIAC's clients to facilities outside of Florida and has never provided advance notice to FIAC, in violation of the Flores agreement. These transfers have undermined the children's legal cases because essential case preparation time is abruptly interrupted and the children's cases unnecessarily prolonged. Effective communication with the transferred child becomes especially difficult. It is virtually impossible for a non-profit agency like FIAC to continue to represent children when they are transferred hundreds, if not thousands, of miles away, and FIAC has spent countless hours attempting to locate new *pro bono* counsel for such children.

Transfers also frequently fail to take into account a child's special needs, such as the need for a special language service or counseling. For example, Alfredo, a 16-year-old indigenous boy from Guatemala, is currently detained in Pennsylvania, which is over 1200 miles from South Florida where the only known interpreter in the country who understands his rare native dialect is located. Despite Alfredo's diagnosis of Chronic Post Traumatic Stress Disorder after his arrival in the United States, he has not received the intensive mental health treatment he so desperately needs and was transferred eight times in two months, causing his condition to seriously deteriorate.

All detained children in South Florida, whether they have an attorney or not, must attend their court proceedings at Krome. Because they cannot be commingled with adults, the children must wait for their hearings outside Krome in the hot Miami sun, often for hours at a time. The Krome firing range is easily heard by the children while they wait outside to see a judge as well as inside the Krome courtrooms. Many of the children have already suffered significant trauma in their lives, and listening to loud blasts of gunfire both before and during their hearings adversely affects their already limited ability to articulate their asylum claims.

¹⁴ Countless other children have been held at the hotel with adult relatives who accompanied them to the U.S.

¹⁵ Letter to Wesley Lee, Krome Officer-in-Charge, from Cheryl Little, FIAC Executive Director, May 30, 2002.

A detained immigrant or refugee child's opportunity to pursue relief is further undermined by their treatment in court. The UNHCR, in its Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, recommends that special consideration be given to claims of persecution by unaccompanied children. In so doing, they emphasize that it may be necessary to give greater weight to certain objective factors when examining the factual elements of a child's claim in order to determine if she has a well-founded fear of persecution. Immigration judges, however, frequently fail to give greater weight to the objective factors in the children's cases, requiring them to meet the same burden as adults. Further, the Board of Immigration Appeals (BIA) recently has come under radical transformation, which has had a significant impact on children's cases. The reforms are designed to make the BIA more efficient and expeditious. However, the actual impact of the new regulations can be extremely detrimental to children whose need for protection necessitates close and careful review of the decisions of immigration judges. The new rules give individual Board members tremendous discretion over individual asylum cases, including the power to summarily affirm decisions of Immigration Judges and to summarily dismiss appeals without according the judge's decision full review. These new regulations are particularly harmful to unaccompanied children whose cases typically involve complicated and novel social and legal issues.

Special Immigrant Juvenile Status (SIJS) is another form of relief available to immigrant children. If a juvenile court judge finds that an immigrant child is a dependent of the court, that the child is eligible for "long-term foster care," that the child has been abused, abandoned or neglected, and that it is not in the child's best interest to be returned to her homeland, the child is eligible to apply for SIJS and lawful permanent residence. Unfortunately, a child in INS detention is *only* eligible to present her case to a juvenile court judge *if* the INS gives its consent. It is important to note that even if the juvenile court judge issues a Best Interest Order, it is ultimately up to INS to determine whether the child should be granted Special Immigrant Juvenile Status. INS' consent for the child to go to juvenile court simply allows the child to have his or her day in court regarding allegations of abandonment, abuse and neglect.¹⁶

The INS in South Florida had *never* consented for a child to go to juvenile court for a hearing on her abuse, abandonment or neglect until October 2002.¹⁷ The written decisions FIAC has received denying consent often defy credulity, accusing children of fraud and demonstrating the INS' inherent distrust of children in its custody. Without a guardian *ad litem* to inform such decisions, the INS District Director faces an overwhelming conflict of interest in determining the best interest of the child. Even if the District Director has the best of intentions, he is not a child welfare expert capable of making such determinations.

In addition to asylum and SIJS relief, children are also eligible for other forms of relief under our immigration laws. For example, victims of crimes and severe forms of trafficking may be eligible for "T" or "U" visa categories, which Congress created in 2000.¹⁸

There is currently no legal limit on the length of time a child may spend in INS detention, although the *Flores* agreement requires that INS quickly and safely release a child to her eligible sponsor. INS recently claimed that it hopes to convert an INS detention facility for children in Arizona into a long-term shelter. Clearly, long-term detention is not in a child's best interest, and this plan indicates INS' inclination to prioritize its enforcement interests over the interests of the child. Considerable research

¹⁶ Section 101 (a)(27)(J)(iii)(I) Immigration and Nationality Act; see also Thomas E. Cook's July 9, 1999 Memorandum to Regional Directors stating, "The district director, in consultation with the district counsel, should consent to the juvenile court's jurisdiction if: 1) it appears that the juvenile would be eligible for SIJ status if a dependency order is issued; and 2) in the judgment of the district director, the dependency proceeding would be in the best interest of the juvenile."

¹⁷ Shortly before this report went to publication, FIAC received the first and only grant of consent in South Florida by INS for a child to go to juvenile court (see pp. 16 – 19, "Alfredo"). While positive, this grant of consent was only made ten months after it had been requested. While waiting for the decision, the child languished in detention.

¹⁸ Victims of a range of crimes (including children), who have suffered serious physical or mental abuse as a result, may be eligible for a "U" nonimmigrant visa if they cooperate in a criminal investigation. Victims of severe forms of trafficking may be eligible for a "T" nonimmigrant visa if they cooperate in investigations of trafficking and show that they would suffer serious harm if returned to their home country. Persons granted "T" or "U" visas may eventually become permanent residents of the U.S.

indicates that institutionalization, separation from attachment figures and cultural dislocation are severe stressors for children, which carry serious long-term consequences.¹⁹

In South Florida, the INS requires undocumented relatives of children in INS custody to appear before an immigration officer and be placed into removal proceedings in order for the child to be released to their care. Children are thus often used as “bait” to snare undocumented relatives and force them into removal proceedings. The child often feels guilty for putting her relative in such a difficult position or suffers if her closest relative is unwilling to come forward because she could remain in detention despite other release options. For example, in South Florida, if the child has an immediate family member in the U.S. who is undocumented, the INS won’t release the child to other relatives who are US citizens or lawful permanent residents.

On a more positive note, children from Haiti or Cuba who do not have family or sponsors in the United States can be released into foster care, through a special program for unaccompanied Cuban and Haitian entrant children (CHE).²⁰ Miami receives more Cuban and Haitian children than any other INS district in the U.S. Boystown has a number of Creole and Spanish speaking staff and is experienced with this process. Consequently, most Haitian and Cuban children in these circumstances are released to foster care expeditiously. However, although this is a national program, when these children are transferred to other parts of the country where detention staff lack experience with the CHE program, the children’s release is significantly delayed.

While every child’s potential sponsor is subject to background checks and suitability assessments, there are far more extensive inquiries and requirements in the cases of Indian and Chinese children. Unfortunately, when the home study is denied, neither the child nor her attorney are given any explanation regarding the denial from INS or the agency that conducted the home study.

The INS regularly displays its distrust of children in its custody. For example, the INS routinely contracts dentists to perform forensic dental exams on persons it suspects are not minors, despite evidence to the contrary. These exams are far from reliable and do not take into account cultural and developmental differences. According to Dr. Herbert H. Frommer, the director of radiology at New York University College of Dentistry, “It is impossible to make an exact judgment based on radiographs of whether an individual is above or below the age of 18.”²¹ The Lawyers Committee for Human Rights and Women’s Commission for Refugee Women and Children are among those organizations that have raised serious concerns about this practice.

The obstacles faced by children in INS detention in Florida, as well as by their advocates, are clearly enormous. The conflicting role of INS as enforcer and caregiver, as well as the complexity of the various forms of legal relief available for children under current immigration law, must be understood through the prism of a child’s vulnerability, trauma and innocence. This report documents the cases of a number of children whom FIAC has encountered in INS custody in Florida. As these children’s experiences indicate, a wide range of problems exist in INS’ treatment of children, from the moment of their first interrogation by airport officials to the manner in which they are treated in court by INS trial attorneys and immigration judges.

In response to a bill first introduced in the U.S. Congress by Senator Dianne Feinstein that would overhaul the treatment of immigrant and refugee children, the INS created an “Office of Juvenile Affairs” (OJA) to oversee its unaccompanied minors program. The INS has been hopelessly decentralized for years, and the responsibility for the care and custody of immigrant and refugee children has been moved

¹⁹ Please contact FIAC for an extensive list of references and suggested readings on this issue.

²⁰ Cuban and Haitian entrant children are treated the same as asylees and refugees and are eligible for federal foster care under welfare reform legislation of 1996 if no family sponsor is available. Their release to foster care is also pursuant to the Flores agreement, which allows the release of a child in INS custody to “a licensed program willing to take custody” (paragraph 14, E). The U.S. Catholic Conference of Bishops has a history of placing unaccompanied Haitian children detained in South Florida with their program.

²¹ Hedges, Chris. “Crucial I.N.S. Gatekeeper: The Airport Dentist,” *New York Times*, July 22, 2000, p. A1.

to various divisions of the Department of Justice on numerous occasions.²² Since its creation in July 2002, the OJA has already had two interim directors. While FIAC's interactions with the individuals directing the OJA have been positive and their decisions regarding certain cases have been thoughtful and encouraging, this still does not represent the sustainable and systematic change needed for the improved treatment of children by the agency. Indeed, creation of the OJA does not address the fundamental conflict of interest the INS faces in its care, custody and removal of immigrant children in the U.S.

The U.S. Congress is now poised to make significant changes regarding how immigrant and refugee children are treated. Legislation for a new Department of Homeland Security (DHS) initially proposed to place all INS functions, including the care and custody of children, under the new agency. Two Substitutes to this legislation (one introduced by Senator Lieberman and the other by Senators Gramm and Miller) would remove the care and custody of unaccompanied children out of the Department of Homeland Security and Department of Justice, and place them under the jurisdiction of the Office of Refugee Resettlement (ORR), which is under the Department of Health and Human Services. This office is far better equipped to oversee the care of vulnerable children, however there is no time limit as to how quickly the transfer to ORR need be done. Moreover, the legislation originally introduced by Senator Feinstein is embodied in Title XII of the Lieberman Substitute to the Homeland Security proposal and would allow for government appointed attorneys and guardians *ad litem* for the children. The current administration is supporting the Gramm Substitute, which strips the Homeland Security legislation of many of the important reforms fundamental to the protection of unaccompanied children. The Gramm Substitute would not even provide children with an attorney or a guardian *ad litem*, as they so desperately need.

The children profiled in this report are not simply those who have fallen through the cracks. The serious concerns raised by the individual cases profiled herein are symptomatic of the larger problem of INS' failure to protect the best interest of children in its custody. This report is meant to compliment a May 2002 report written by the Women's Commission for Refugee Women and Children, *Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children*, which offers a comprehensive investigation and analysis of the treatment of children asylum seekers across the country.

²² Since 1996, this responsibility has been within INS. In 2000, the INS merged all of its functions for these children to a division under the Detention and Removal branch, further magnifying the enforcement function of INS regarding children in its care.

Gabriel²³

Honduras, 16 years old²⁴

Everyone at Boystown remembers Gabriel. He is the sweet child who wrote poetry about the abuse he suffered in Honduras. Gabriel was abandoned as a child and severely abused on the streets, where he was forced to raise himself. He eventually **escaped his tragic childhood** and entered the U.S. in early 1999 when he was 16 years old. He was detained and placed in INS custody at Boystown. At that time, there were no *pro bono* lawyers assisting minors at Boystown and Gabriel went to court alone.

Like children at Boystown today, Gabriel was taken to court at the Krome Service Processing Center (Krome), an INS detention facility for adults. Gabriel was escorted to court by armed INS security personnel, as were all children at that time.²⁵ He could hear loud explosions of gunfire from the Krome firing range upon arrival at Krome and while waiting to be taken to court. He could even hear gunfire in the courtroom as he tried to defend himself before the Immigration Judge and against an experienced INS trial attorney.

In court, Gabriel was only granted four weeks to find an attorney. Despite his clear indications to the Court that he was afraid to return to Honduras, that his father was dead, and that he sought to go anywhere but Honduras, Gabriel was never informed by the Court or INS of his right to apply for asylum or of any other

Excerpts from the official transcript of Gabriel's court proceeding:

Judge: The Immigration Service says you entered without being inspected this year. Do you understand?

Gabriel: That is correct.

Judge: All right. At this hearing you may offer evidence to the Court and the Government may do the same. If the Government offers evidence, you may look at it, you may object to it. If you or the Government calls a witness, you may both ask questions of any witness that appears. . .

Judge: Mr. Muñoz, from what you tell me you are in fact subject to removal from the United States because you entered without being inspected. Is there anything else you'd like to tell me?

Gabriel: Yes.

Judge: Proceed.

Gabriel: Well, I would like to say that I have no home in my native country. I'm living in the streets. I am homeless. I have no future. There's no school for me because there is nothing that my country can offer me.

Judge: All right. Do you have sufficient money to pay your way out of the United States?

Gabriel: No.

Judge: They the Government must buy you a ticket. Do you want to be removed to [your country of origin] or some other country?

Gabriel: It's terrible in [my home country]. I'd like to choose another country . . . I choose another country in South America, Argentina, for example. Instead of my country.

Judge: If Argentina will take you as a deportee, we'll send you there . . .

INS Trial Attorney to Judge: Judge, can we designate in the alternative his country, so we don't have to come back to the Court?

Judge: You may indeed . . .

Gabriel: Can I have another? Can I ask another question?

Judge: Yes, go ahead.

Gabriel: Sir, I'd like to know which is the deportation document to be signed so I let you know in advance I don't want, I don't wish to sign that document?

Judge: You don't have to sign any document. I sign the document. You have nothing to do with it. Now, the Government has requested that I name [your country of origin] as an alternative country in the event Argentina will not accept you. Do you understand?

Gabriel: Can I choose a free attorney now with this document?

Judge: What do you mean you want a free attorney? . . .

Gabriel was ordered removed to his country of origin. He never had an attorney in court.

²³ Most names in this report have been changed to protect the confidentiality of the children.

²⁴ Ages of the children in this report reflect their age when placed in INS custody.

²⁵ In Spring 2001, the Immigration Court at Krome instituted a special docket for children detained at Boystown so that their preliminary hearings are held at the same time with the same judge on Thursday mornings. Boystown staff, rather than INS guards, now transport the children to Krome. Previously, as when Gabriel was detained at Boystown, children could be scheduled for their hearings at any time on any day of the week and armed INS Detention Officers transported each child to court.

form of relief under immigration law. He was simply ordered back to Honduras (see box on previous page).

After the judge ordered him to be removed from the United States, Gabriel, who spoke no English, attempted to submit his own appeal. Gabriel's caseworker at Boystown knew about his abusive childhood and his fear of return through his poetry and attempted to contact the legal service providers on a list provided to Gabriel in court.

A FIAC attorney received a call from Boystown regarding Gabriel just three days before his appeal was due, and immediately went to Boystown to interview him. Unfortunately, it was too late. Gabriel, who had already been detained for months, was without hope. He had been forced to represent himself in court and had been ordered removed. As a result, he did not understand that he had strong and compelling claims for relief. He had no faith in the system, yet was terribly afraid of being returned to his country. Desperate, Gabriel ran away and disappeared.

Soon thereafter, FIAC went to Boystown in an effort to reach out to other detained children and hoping to prevent what happened to Gabriel from happening to another child. Sadly, virtually all of the children FIAC interviewed during that visit had signed away their right to a hearing before an immigration judge the previous day, during an INS Deportation Officer's visit.

Gabriel's treatment in court is not uncommon:

Like Gabriel, Marie, a 15-year-old Haitian girl, appeared in court without an attorney. During her first master calendar hearing, a Krome immigration judge asked Marie if she knew what she was charged with. When she guessed, "I did something wrong," the judge sternly answered, "You sure did." When Marie subsequently expressed a fear of return to Haiti, the INS attorney asked the Court to continue her case so that she could be informed of her right to apply for asylum. The judge responded, "I don't see any indication that she's eligible for asylum under any stretch of the imagination. However, if you want a continuance...I'll be glad to grant it."

It takes special skills to ensure that children will understand what is being said in court and to elicit their stories. These skills do not come naturally. Presently, INS attorneys and immigration judges aggressively question minors during their hearings in ways that are often confusing, unhelpful and unnecessary. For example, children are vigorously cross-examined by INS attorneys, sometimes for over an hour. Comments such as, "That is not what you told the Court earlier, is it?" are routine. Questions by both INS attorneys and judges appear to come from a perception that the child is trying to deceive the INS or the Court with claims of persecution.

At the first hearing (master calendar) before the immigration judge, the child is always asked whether she remembers receiving a copy of the document listing the charges against her (called a Notice to Appear or "NTA"). Most children do not understand the question because they do not understand what it means to have charges pending against them. The child frequently responds that she has not received the document or states that she doesn't understand the question. Often the judge, interpreter and INS attorney react in a hostile manner if the child states she doesn't understand. The judge will then show the NTA to the child and ask the child if she recognizes the document or her signature at the bottom of the page. If the child still appears to not understand, the judge, INS trial attorney, and even court interpreter frequently are visibly upset. Interpreters, for example, will roll their eyes and a judge may lean forward in an aggressive manner and speak more loudly in a last-ditch attempt to achieve his goal. Sometimes when the child states that she does recognize her signature, the judge continues in an upset tone, "So you did receive a copy, didn't you?" as if the child had been trying to mislead the court. Complicated questions such as, "Is your mother a lawful permanent resident? Is she legal in the US? Does she have a green-card?" or, "The government states you entered without proper documents, do you understand?" are commonplace.

Fega

Nigeria, 7 years old

Fega, an ethnic Yoruba girl from Nigeria, was seven years old when she arrived alone in New York City on an airplane in May 2000. With a terrible rash covering her body, she immediately presented apparent signs of abandonment and neglect. When Fega was very young, her father forced her and her mother to leave their home in Nigeria. Her mother fled to the United States, leaving Fega to live with an uncle. As Fega neared the age of eight, her uncle and father decided to smuggle Fega out of Nigeria so that she could be reunited with her mother in the United States.²⁶

At the airport in New York, immigration officials determined that Fega's passport and visa were false and detained her. Undocumented and scared, Fega's mother sent a note to the INS indicating that she would not be coming for Fega. The INS Deportation Officer later contacted her father who stated he did not want Fega back in Nigeria.

One month later, FIAC met Fega when she appeared alone in court. Despite her young age, Fega had no right to either a guardian or an attorney, and in May 2000, there was no system in place to ensure that her legal rights would be protected.

Fega curled up in a fetal position and wept when she heard Yoruba, her native language, for the first time in over a year of detention in the United States. The primary languages at Boystown, where Fega spent 15 months of her young life, are Spanish, Creole and Mandarin. Fega asked the Yoruba interpreter in English if she was her mother, as she often asked any new woman she encountered.

FIAC submitted a request to the INS District Director for consent for Fega to pursue Special Immigrant Juvenile Status (SIJS), a form of relief for immigrant children who have been abused, abandoned or neglected. Six months later, the District Director denied Fega's request for consent to go to juvenile court and accused her, through her parents, of putting forth a fraudulent claim of abandonment.

FIAC also helped Fega present her case for asylum. However, after FIAC had been representing Fega for eight months, INS attorneys informed the court that FIAC had no standing to represent Fega and that Fega couldn't be represented by FIAC. The INS trial attorney's argument was that, as the child's guardian, the INS had not agreed to such representation. INS also claimed that they were the only entity with the authority to appoint counsel. In fact, during a hearing, the INS trial attorney suggested that the Krome Officer-in-Charge should be making important decisions such as this in Fega's case. The immigration judge, after requesting and reviewing briefs on the issue, ruled that FIAC represented Fega and that she could file her asylum application.

FIAC also requested Fega's release to another relative who wished to care for her. The *Flores* agreement requires INS to release a child once it is established that detention is not required to ensure court appearances or when detention is not necessary for the child's safety and there is a suitable sponsor for the child. However, whenever a child's parent in the Miami District is suspected to be in the United States, the child is not released to anyone but the parent regardless of the parent's ability or willingness to care for the child. Fega therefore, remained in INS custody for 15 months.²⁷

²⁶ Fega's new attorneys at the Yale Law School Legal Clinic recently acquired information indicating that the father wanted Fega to leave Nigeria because he was afraid that she would be circumcised on her eighth birthday.

²⁷ This practice is in clear violation of sections of the *Flores* agreement, which are designed to protect the best interest of the child. The *Flores* agreement lists people to whom the INS will release children in order of preference: (1) a parent, (2) a legal guardian, (3) an adult relative, (4) an adult individual or entity designated by the parent or legal guardian, (5) a licensed program willing to accept legal custody, or (6) another adult individual or entity seeking custody when family reunification is not an option. *See Flores*, para. 14.

Excerpt of Transcript of Fega's Master Calendar Hearing on April 6, 2001, (FIAC began representing her in June 2000):

INS Trial Attorney (TA): After research this issue has now been sent to Washington to address the issue... The respondent's age is the problem in this case. There is the issue and the Service is not willing at this point in time to concede that an attorney may represent a child of that minor age in an immigration proceeding... That the attorney absent a qualified guardian for the child cannot represent them and go forward in an immigration hearing...

Judge: Now wait a minute, now let me ask you this. So you're saying that she cannot be represented?

INS TA: No your honor, I'm saying that an attorney cannot represent a minor of that age before an immigration court absent a guardian.

Judge: So, all right, there's no guardian... The regulations seem to say the head of the [Krome Detention] camp is the guardian...

INS TA: Correct...

When Fega had been in INS custody for more than 13 months, the *New York Times* ran a front page Sunday story on her case.²⁸ A follow-up story ran two days later. Kate Porterfield, a child psychologist with the Bellevue-New York University program for survivors of torture, who works with refugee children, told the *New York Times* when asked about Fega's case that, "It's very hard on a child's sense of trust and safety in the world to not have a home to live in. Children need to feel they have a home, and detention is not home."²⁹

Within days following the *New York Times* articles, the INS dispatched two officers to visit Fega's father in London in an apparent attempt to reunify her with him. As a result of growing public pressure, Fega was finally released to a cousin on August 14, 2001. She faces continued removal proceedings but a juvenile court judge with training in child welfare will finally have jurisdiction to review her allegations of abandonment, abuse and neglect. Fega lives in Connecticut and is currently represented by attorneys and students at the Yale Law School Legal Clinic. Following her release in February 2002, Fega attended a Senate hearing on the Unaccompanied Alien Child Protection Act, a bill which is now embodied in other legislation before the Senate. If

passed, the bill would ensure that children like Fega would have a guardian *ad litem* and be appointed an attorney in their immigration proceedings.

²⁸ Schmitt, Eric. "INS Both Jailer and Parent To a Child Without a Nation," *New York Times*, Sunday, June 24, 2001, p. A1.

²⁹ Schmitt, Eric. "Case of Detained Nigerian Girl Takes U.S. Agency to London," *New York Times*, Tuesday, June 26, 2001, p. A15.

Abdul Kher

Somalia, 17 years old

For six years, Abdul and his father searched for Abdul's mother and younger siblings. The family had been separated in the chaos of the war breaking out in Somalia in late 1990 and their search complicated by the ensuing clan violence. When he was fourteen years old, Abdul's father was brutally murdered in front of him. Abdul fled for his life, unable to even bury his father. Alone, he began a terrifying but courageous journey that would take him through several refugee camps, where he was targeted because he was from a certain clan, and eventually to the United States.

Abdul arrived in the United States three months shy of his eighteenth birthday. FIAC made an emergency request for INS' consent for Abdul to go to juvenile court to have a hearing on a request for dependency status. When she hand-delivered the request, Abdul's attorney was told by INS not to expect a quick response because FIAC should understand, "what boy [now] has the attention of the [INS] District Director," in reference to Elian Gonzalez. Indeed, the INS did not timely respond to Abdul's consent request even though when he turned 18, the juvenile court judge could no longer hear his case. In response to inquiries by FIAC, INS demanded excessive documentation from Abdul to prove his identity and age, although it is recognized that no such reliable public records exist in Somalia. The UNHCR asked that documentary evidence such as this generally not be required, "in view of the difficulty of proof inherent in the special situation in which applicants for refugee status find themselves. It is often difficult or impossible to obtain documentary support, especially from countries that have suffered and continue to suffer through periods of turbulence."³⁰

FIAC found a caring Somali family who wished to take full responsibility for Abdul if INS released him from Boystown. The Deportation Officer (DO) in Abdul's case refused to even consider his release to this family and told FIAC that he would not release a boy only two weeks before his 18th birthday so that he could "take advantage" of relief which might exist before he turned 18. The DO also told Abdul's attorney that his job was enforcement of the immigration laws and that as an enforcer of the laws it may be in the INS' best interest to hold Abdul until he turned 18, and then take him to Krome to be detained with the "big boys."³¹

At Boystown, Abdul had a toothache that caused his mouth to swell and gave him a terrible headache. So when he was taken to a dentist the day before his 18th birthday, he was happy and thought that at least the pain in his mouth would finally be taken away. Instead of treating Abdul's toothache, however, the dentist performed a radiograph dental exam on Abdul to determine his age. As a result of the exam, the INS determined that Abdul was 18 on the day before his stated 18th birthday, immediately transferred him to Krome (an adult detention facility), and harshly questioned his credibility.

FIAC had an independent dental exam performed on Abdul after he turned 18, which not only showed that the INS dental exam did not take into account his cultural and racial background, but also that it had wrongly determined

On INS' use of dental exams to determine age, Nalton Ferraro, a dental surgeon at Children's Hospital in Boston who is also on the faculty of Harvard University, told a reporter from Reuters:

"I find it breathtaking that someone could be so wrong about the biologic concept, draw conclusions from this serious misinterpretation that have a profound impact on the life and welfare of another human being and do it with the official or quasi-official sanction of the government. A 15-year-old can have a very mature dentition with fully formed wisdom teeth. Conversely, an 18-year-old can have wisdom teeth that on radiograph are less mature in development and more typical of the wisdom tooth you might see in a 15 or 16 year old."

~ "New York Dentists Can Settle Fate of Migrants," by Alan Elsner (Reuters), January 11, 2002.

³⁰ Letter from Bemma Donkoh, Deputy Regional Representative, United Nations High Commissioner for Refugees, Regarding Request for Verification of Status of Refugees in Kenya, October 27, 1998.

³¹ Affidavit of Christina Kleiser, FIAC attorney, February 11, 2000.

Abdul's age.³² Abdul never received treatment for his toothache while in INS custody.

The INS eventually denied Abdul's request for consent to go to juvenile court, stating that he was unable to prove his identity or age.

Although INS did not allow Abdul to appear in juvenile court, they could not prevent him from applying for political asylum, which he did. Abdul was eventually released from INS custody as an adult and his asylum case is pending. On October 11, 2002, the immigration judge indicated that he believes a grant of asylum is warranted in Abdul's case. A decision is expected shortly.

³² Letter from Richard R. Souviron, D.D.S. to Christina Kleiser, FIAC attorney, regarding Abdul's oral examination and panoramic x-ray, June 5, 2000.

Baby Margaret

Jamaica, 18 months old

The first time Baby Margaret entered a courtroom was in the arms of her INS Deportation Officer. She did not have an attorney or a guardian *ad litem*, and at just 18 months of age was unable to speak to the judge herself. The Immigration Judge asked the Deportation Officer (DO) if he was going to represent her, which he declined to do. In this case, the DO called FIAC, which took Baby Margaret's case *pro bono*.

Baby Margaret's identity was initially unknown because no one claimed any relationship to her after she was smuggled into the United States in early June 2000. Called "Jane Doe" by INS, and "Baby Jamaica" by everyone else who met her, Baby Margaret was detained by INS at Boystown.

UNHCR perspective on guardianship of unaccompanied children

"It is suggested that an independent and formally accredited organization be identified/established in each country, which will appoint a guardian or adviser as soon as the unaccompanied child is identified. The guardian or adviser should have the necessary expertise in the field of child caring so as to ensure that the interests of the child are safeguarded, and that the child's legal, social, medical and psychological needs are appropriately covered during the refugee status determination procedures and until a durable solution for the child has been identified and implemented. To this end, the guardian or adviser would act as a link between the child and existing specialist agencies/ individuals who would provide the continuum of care required by the child."

*UNHCR Guidelines on Unaccompanied Children,
February 1997, paragraph 5.7*

According to press reports and public records, Baby Margaret arrived in Miami on a plane accompanied by a fifty-nine year old woman, Ms. Fyffe.³³ A record check by inspection officials at the airport revealed that Ms. Fyffe had previously brought unrelated children to the United States on at least two occasions. Ms. Fyffe presented documents for Baby Margaret and said she brought the baby to the U.S. as a "favor" for the child's mother who lived in Ft. Lauderdale. Ms. Fyffe also said that another woman, Ms. Barnes, was waiting at the airport to pick up the child because the mother was ill. The officials investigated Ms. Fyffe's claims and found that Baby Margaret's documents, as well as the story regarding the alleged mother in Ft. Lauderdale, were false. Ms. Barnes, however, was located waiting at the airport. Both Ms. Fyffe and Ms. Barnes denied any relationship to Baby Margaret.

Ms. Fyffe and Ms. Barnes were both placed in federal custody in Miami and Baby Margaret was taken to Boystown. A little over a month later, Ms. Fyffe and Ms. Barnes were indicted by a Grand Jury on charges of conspiracy and alien smuggling.³⁴ Baby Margaret remained unidentified and stateless in INS custody, and Jamaica refused to take Baby Margaret into its own child welfare system.

In August 2000, FIAC asked for INS consent to file a juvenile dependency petition in juvenile court for Baby Margaret, who appeared to have been abandoned.

After three and a half months in federal custody, on September 13, 2000, Ms. Barnes pled guilty to the charges of conspiracy and alien smuggling and for the first time, she claimed she was the mother of Baby Margaret. Ms. Barnes requested DNA testing to prove her relationship to Baby Margaret, who by then had been detained for more than three months.³⁵

The U.S. District Judge and the government prosecutor in Ms. Barnes' case expressed serious concern that Baby Margaret did not have a guardian to consent to the collection of blood samples.³⁶ Eventually, the government opted for a saliva test of Baby Margaret's DNA, which established that Ms. Barnes was

³³ Kidwell, David. "Baby Smuggling or Family Affair?" *The Miami Herald*, October 12, 2000, p. 1B.

³⁴ 18 USC 371, Conspiracy, and 8 USC 1324 (a) (1) (A), Alien Smuggling.

³⁵ Kidwell, David. "Baby Smuggling or Family Affair?" *The Miami Herald*, October 12, 2000, p. 1B.

³⁶ *Ibid.*

her mother. Ms. Barnes was sentenced to time served, placed in INS removal proceedings and transferred to Krome.³⁷

At her court hearing in September 2000, Ms. Barnes' also claimed that Ms. Fyffe was her mother and Baby Margaret's grandmother. For more than three months Ms. Fyffe had said she was of no relation to Baby Margaret and had given INS officials false information. At her own hearing on smuggling charges, Ms. Fyffe argued that she did not know Baby Margaret was her granddaughter. She said she had been conned by her daughter, Ms. Barnes, who was "embarrassed by the child" because Baby Margaret was born out of wedlock. Ms. Fyffe said her daughter was responsible for the scheme to conceal Baby Margaret's identity and bring her to the U.S. Ms. Barnes corroborated her mother's story and Ms. Fyffe's case ended in a mistrial. Ms. Fyffe was placed in INS removal proceedings.³⁸

Since Baby Margaret was in INS custody she had no right to a guardian. When Ms. Barnes was ordered removed to Jamaica by an Immigration Judge, she requested that her daughter be deported with her. Without further inquiry as to what was in the best interest of Baby Margaret, she was deported to Jamaica with Ms. Barnes in December 2000. After Baby Margaret was deported, FIAC received a written decision from INS denying her consent to go to juvenile court.

³⁷ *Ibid.*

³⁸ Kidwell, David. "Smuggling Case Ends in Mistrial," *The Miami Herald*, October 19, 2000, p. 3B.

Ping Lei

China, 17 years old

Ping Lei was in detention at Boystown for nearly a year when around four o'clock one morning in March 2001, without warning, she was told she had a half hour to collect her things because she was being transferred from Boystown to another detention facility almost 1500 miles away. Two boys were also transferred at the same time. FIAC represented all three children. FIAC only learned of the children's transfer when the one of the boys paged FIAC's Miami office after they were transferred. FIAC was told the reason for the transfer was an "influx" of asylum seekers, particularly from Colombia.³⁹ However, when FIAC visited Boystown shortly after the children's transfer, only 19 of the facility's 32 beds were in use and there were only three Colombian children there.

Ping's release request was denied when she was at Boystown. Despite requests for further information, neither Ping nor FIAC were given any explanation regarding INS' denial. Ping's family had paid smugglers to bring her to the U.S. When Ping arrived in the United States, a private attorney was almost immediately retained for her in New York. Ping's attorney filed an asylum application and supporting documentation for her. A few weeks later, her attorney was arrested, having been accused of working with smugglers to bring Chinese immigrants illegally into the US. On August 9, 2002, this attorney and his office manager/wife pled guilty to racketeering charges for what their former employees have said was an extremely profitable business where "extortion, beatings and human slavery are the norm."⁴⁰ When Ping asked FIAC to represent her she said that her family could find no other attorney willing to take a case that this attorney had previously represented. Among the claims against her former attorney was that he was filing frivolous asylum applications, although Ping emphatically stated her asylum claim was valid. Ping's asylum case was denied, in all likelihood due to the cloud of suspicion over her application because of who her attorney was.

The INS is aware that Chinese children whose asylum claims are denied may be subject to "re-education" in forced labor camps if returned to China.⁴¹

Chinese Children in the Hands of "Snakeheads"

Detained children are in contact with many people who play conflicting and complicated roles in their lives, many of whom can influence decisions that will have a tremendous impact on their lives. Children from China often face additional challenges because of the smuggling operations that bring many of them here. The smugglers often hire private attorneys to represent the children. Ping's family had paid smugglers to bring her to the U.S. Children are smuggled to the United States for fees of up to \$50,000 and may be forced into bondage in order to pay the smugglers. The tremendous debt Chinese children incur to their smugglers—who are known to the Chinese as "snakeheads"—instills in them a great sense of fear and distrust, which makes them particularly vulnerable. Yet many of the Chinese children have truly been persecuted in China and have bona fide asylum claims.

When a child like Ping is smuggled to the U.S. and faces serious harm as a result but is denied asylum, FIAC attorneys also talk to the child about alternative forms of relief from deportation such as applying for a "T" (trafficking) visa on their behalf. Ping's transfer complicated any such conversations that might have occurred. Ping often cried when she called FIAC after her transfer because she felt isolated and was so afraid of deportation, and also because of her intense fear of her smugglers and fear for her family's safety in China. While the T visa, if granted, would protect the child, it does not offer protection for the child's family. Ping was deported to China and has not been heard from since.

³⁹ According to other advocates across the country, the INS routinely says it has transferred children because of an "influx." The *Flores* agreement defined an influx as 131 children or more, and created an exception to the least restrictive setting principle in such a situation. However, at the time of the *Flores* agreement, there were only 130 shelter beds available, a number that has nearly tripled since.

⁴⁰ DeStefan, Anthony M. "Pair Facing Jail For Smuggling / Couple made millions moving immigrants," *Newsday*, Friday, August 9, 2002.

⁴¹ INS Resource Information Center, "China: Repatriated Illegal Emigrants," Query Response, December 17, 1998.

Alfredo

Guatemala, 16 years old

In January 2002, while detained in Pennsylvania, Alfredo struggled to speak through a telephonic interpreter, the only person in the country who was able to interpret his rare dialect, and explain how his father used to pin him to the ground and violently beat him. His father had physically abused Alfredo and his siblings for years, killing one of them, and his mother suffers from a serious mental illness and cannot care for herself, much less her children. While in a juvenile facility in Pennsylvania, Alfredo once again found himself pinned to the ground, but this time by facility staff because he could not effectively communicate with staff and did not understand that he had broken a rule earlier in the day. FIAC witnessed three large staff persons pin Alfredo, who is very slight and less than five feet tall, to a green plastic mattress they placed on the floor.⁴² The staff followed the shelter's rules regarding "physical restraint" of minors when they held him face down on the mattress as he softly cried.⁴³

When Alfredo fled his rural indigenous community in Guatemala in fear for his life and arrived in the United States in June 2001, he thought he had finally escaped the nightmare of violence that had permeated his childhood. Unfortunately, Alfredo continues to languish in INS detention seventeen months following his arrival.

Alfredo is a Mayan child who speaks the rare Southern Low dialect of Mam, an indigenous language. Neither the immigration court nor Boystown staff were able to find an interpreter for him.⁴⁴ Although he has slowly begun to learn basic Spanish and English, Alfredo's initial months of INS detention were extremely isolating and frightening because of language barriers. After a nationwide search, FIAC was able to locate an interpreter in South Florida who works with indigenous children in the public school system and who has also offered to sponsor him should INS release him from detention. INS has never used a Mam interpreter to communicate with Alfredo. Boystown staff speaks Spanish, English, Creole and Mandarin. At Boystown, Alfredo was told he could only speak to his brother in Spanish, because staff needed to monitor his phone calls. Alfredo and his brother were therefore unable to communicate with one another, so they could no longer speak on the phone, further isolating Alfredo.

INS' treatment of Alfredo while in detention has severely exacerbated his already fragile condition. A forensic psychologist met with Alfredo in preparation for his asylum case and diagnosed him as suffering from Post Traumatic Stress Disorder (PTSD) as a result of the abuse he suffered while in Guatemala. The expert also noted that his mental health condition had deteriorated severely due to the isolating and disruptive conditions of his detention. To date, Alfredo has received none of the appropriate intensive mental health services necessary to alleviate his suffering and prevent further deterioration of his PTSD illness.

Perhaps most traumatizing of all of his experiences while in INS detention have been the frequent transfers—nine to date—from one detention facility to another, which began with Alfredo's abrupt removal

⁴² Affidavit of Charu Newhouse al-Sahli, March 8, 2002; Statement of Joseph Cackley, January 21, 2002. When Alfredo's FIAC attorney visited him at Berks in August 2002, she noticed a marked change in Alfredo's demeanor as he startled and jumped whenever he heard other children being reprimanded outside and repeated over and over his humiliation at being punished and forced to sit facing a wall.

⁴³ FIAC made both informal and formal complaints about Alfredo's treatment at Berks. In response to a letter signed by more than a dozen organizations on April 25, 2002 complaining about Alfredo's treatment, including the use of a "restraint" on him, the Acting Director of the INS' Office of Juvenile Affairs responded that Alfredo had been "restrained for a short period of time, using a technique approved by the Pennsylvania Department of Public Welfare called 'non-threatening crisis intervention.'" (Letter from INS Acting Director of the Office of Juvenile Affairs Steven J. Farquharson, received May 7, 2002.) However, in a subsequent response to the same sign-on letter, the INS Executive Associate Commissioner wrote regarding the same incident that Alfredo had "only suffered loss of privileges for 1 day—nothing more." (Letter from Johnny Williams, Executive Associate Commissioner, Office of Field Operations, INS, July 22, 2002.)

⁴⁴ When Alfredo initially arrived at Boystown there was another boy who spoke his language as well as Spanish, who often interpreted for Alfredo. However, this boy was released within two months, after which Alfredo was extremely isolated. At that point, Boystown staff realized the need for an interpreter for Alfredo and initiated contact with the Guatemalan consulate in Miami in order to find one. However, an interpreter was never used, leading to countless miscommunications.

from Boystown to the Monroe County adult jail in Key West in November 2001. His FIAC attorney in Miami was given no advance notice of the transfer. While incarcerated in the Monroe County Jail, a facility designed to detain adult criminal offenders and occasionally juveniles charged as adult felons, Alfredo could not communicate his most basic needs and for several days did not shower, go outside or use a telephone and spent his time there with "just a clock looking at [him]." Alfredo was shackled and handcuffed to a chain around his waist while both entering and leaving the jail. FIAC attorneys wrote a detailed complaint to INS about detention conditions at the Monroe County Jail and requested he be brought back to Boystown.⁴⁵ The INS only moved Alfredo from that facility after his attorneys advised the Monroe County Sheriff and the INS that the placement of a child with no criminal record in an adult county jail in Florida was illegal. The Sheriff's attorneys agreed not only that the housing of a non-criminal child at the Monroe County Jail was not contemplated by its contract with INS, but also that Florida state law prohibits the placement of a child at an adult jail, unless that child had been convicted of a crime as an adult, which clearly was not the case with Alfredo.

Although Alfredo was taken out of the jail after his attorneys' intervention, he was not transferred back to Boystown, but instead to the Berks County Youth Center (Berks) in Leesport, Pennsylvania. Berks is over 1200 miles from Alfredo's attorney and from the only interpreter in the country able to understand him. Again, Alfredo's attorney was not notified of his transfer until after the fact, in violation of the *Flores* agreement, and the INS did not use an interpreter to communicate with Alfredo. Alfredo, who was shackled and handcuffed when transported, said his "stomach came to [his] mouth" because he thought he was being deported to Guatemala where his life would be in danger.

While in Miami for his appearances in both federal and immigration court, Alfredo was detained by INS in a Miami hotel room. His last stay at the hotel lasted an entire month. Alfredo could not receive visits at the hotel and literally his only activity was watching television. Like all other children detained at the hotel, he was not provided any educational services, or even a pencil and paper. During his time at the hotel he was not allowed outside of his room, except when taken to court or for attorney visitation at Krome. While INS national policy limits the use of restraints on children, Alfredo was often shackled and handcuffed when transported.

Unable to read or write when he entered the U.S., Alfredo loves to draw. At Christmas, Alfredo was brought from the hotel to Krome for visitation with FIAC. When FIAC tried to deliver him Christmas gifts of an art set and jigsaw puzzle for use at the hotel, the gifts were denied for him on the basis that they were considered "contraband." Only after many pleas from his attorneys and inquiries from the national media did the INS finally agree to provide Alfredo with educational services, a haircut, a change of clothing and some paper and a pencil, and then only during the last few days of his stay at the hotel.

FIAC, along with attorneys from the Florida Justice Institute and Florida

**Excerpt from Alfredo's District Court Hearing
Regarding his *Flores* Enforcement Action:**

The Judge directly asked Alfredo's Deportation Officer, whom INS called as a witness at the hearing, how he would consider Alfredo's request for release to one of three highly qualified residential placements.

Alfredo's Deportation Officer (D.O.): "I would recommend denial [of release] in this case because...we already know that he has blood relatives in this country who are circumventing the law and refusing to come forward because they would be subjected to an immigration arrest.... So I'm not going to allow release to a non-relative when we know that there are relatives in the United States."

Judge: "I am outraged that someone would have made up his mind before hearing any evidence whatsoever..."

Alfredo's D.O.: "*Flores* sets the law, sir."

Judge: "I am the law until the Court of Appeals says anything else... He is not going away any place until I say otherwise, or three wiser judges from Atlanta say so. Because right now what I have heard is that the INS is telling the petitioner, 'Don't file any petition, because before we even consider whether to release him in accordance with the regulations, I made up my mind and I am not going to do it...'"

⁴⁵ Letter to INS Miami District Chief of Staff, John Shewairy, from Cheryl Little, December 20, 2001

Legal Services, filed a lawsuit in District Court on February 6, 2002, challenging Alfredo's transfer to Pennsylvania and his treatment while in INS custody. No child had ever filed a *Flores* Enforcement Action before. INS defended its frequent transfers of Alfredo and its denial of his release from custody, alleging that he is a flight risk. Yet the federal court judge found that Alfredo poses no risk of flight.⁴⁶ While the judge felt he himself could not order the INS not to transfer Alfredo, he stated:

"[T]his Court would disagree and could disagree and does disagree with the INS determination this young man as a flight risk... Do I think he would be better off with [one of his sponsors in South Florida]... yes. I think he would be better off. It would probably be a good thing for the young man... [To INS] You all, even after a legal victory can consider what is the right thing to do for this one single individual kid, and I leave it up to you to do what you think is right."⁴⁷

Immediately following his federal court hearing, Alfredo was taken away by U.S. Marshals, weeping, in shackles and handcuffs and flown to Pennsylvania. He was not placed in the more secure part of the facility where children believed to be flight risks are held.

Alfredo applied for political asylum in November 2001. Although the Immigration Judge did not grant him asylum, he found Alfredo completely credible and concluded that he had been severely abused by his father, that his mother was incapable of caring for him and that street children in Guatemala, such as Alfredo, are typically denied protection by the Guatemalan government (see side box). Indeed, an INS public affairs officer in Miami told a Reuters reporter that INS "accept[s] that the father is an abuser and the mother is mentally ill..."⁴⁸

**Excerpt of the Immigration Judge's Decision
in Alfredo's Asylum Case:**

"[T]he Respondent has suffered severely at the hands of his father...and suffers today from that experience... No child should suffer the beatings, and hardship that [Alfredo] has... If this Court were deciding whether the respondent should be allowed to remain in the United States for humanitarian reasons, it would be a simple decision....

"Respondent's attorney has submitted background information demonstrating that children are abused in Guatemala, and that the government is unable or unwilling to protect these children. The State Department confirms that abuse is a large problem.... Street children remain a big problem, and most of these are from abused families. The State Department says, 'The Government and a number of NGO's operate youth centers, but funds devoted to them are not sufficient to alleviate the problem.'"

February 14, 2002

In denying Alfredo asylum, the Immigration Judge treated Alfredo as if he were an adult.⁴⁹ FIAC immediately appealed the denial of asylum to the Board of Immigration Appeals (BIA) and submitted a brief in support of the appeal on July 10, 2002. On July 19, 2002 a single member of the BIA issued a one sentence "summary affirmance" of the Immigration Judge's decision.

In addition to applying for asylum on Alfredo's behalf, FIAC requested INS' consent for Alfredo to have his case of abuse, abandonment and neglect heard by a juvenile court judge. Given his credibility findings and the incredible abuse he has suffered, Alfredo presented an extremely compelling case for consent. Indeed, during Alfredo's asylum hearing, the INS trial attorney felt compelled to inquire affirmatively if consent for juvenile court jurisdiction had been sought on his behalf. Alfredo submitted his written request for consent on January 7, 2002 and was interviewed by the INS Miami District office regarding his request in February 2002. FIAC

submitted additional evidence for INS' consideration, which demonstrates that Alfredo's family situation in Guatemala has further deteriorated since his departure and that he faces certain harm if returned.

⁴⁶ This assessment of Alfredo as a flight risk was based on a conversation overheard by Boystown staff in which a Spanish-speaking child allegedly told Alfredo that he (the Spanish-speaking boy) wished to escape. Although Alfredo did not speak Spanish well at the time, neither Boystown staff nor INS communicated with Alfredo in his language (Mam) regarding the incident. Instead, he was quickly transferred to the Monroe County Jail.

⁴⁷ U.S. District Judge Federico Moreno, *Lopez-Sanchez v. Ashcroft* (02-20421-CIV-MORENO), March 7, 2002.

⁴⁸ Elsner, Alan. "U.S. Immigration Agency a Harsh Jailer of Children," *Reuters*, March 12, 2002.

⁴⁹ See Executive Summary of this report, p. 4.

On October 24, 2002, INS granted its consent for Alfredo to go to juvenile court to present his case of abuse, abandonment and/or neglect. Alfredo is the first child in South Florida to be granted such consent by INS. The new interim director of the INS' Office of Juvenile Affairs (OJA) in Washington issued the decision. While this represents an extremely positive development in Alfredo's case, he languished in detention for ten months while his request was considered.

In early February 2002, Alfredo filed an administrative petition with the INS requesting his release from custody as contemplated by paragraph 14 of the *Flores* agreement. In that petition, Alfredo requested that he be released to the custody of one of three highly qualified residential placements, including two licensed agencies and the sponsorship of Alfredo by his language interpreter. The INS summarily rejected his petition for release without considering any of the placement options on the basis that he had an undocumented brother in the United States (see box on previous page) and on the unfounded claim that he was a flight risk.⁵⁰ An amended complaint regarding Alfredo's release from INS custody was filed on March 29, 2002 in District Court and is pending.

Over a dozen local and national organizations have expressed their deep concern regarding Alfredo's treatment in letters to the Attorney General.⁵¹ Representatives of Amnesty International USA, the Women's Commission for Refugee Women and Children, and Alfredo's attorneys in Miami spoke with OJA staff regarding Alfredo's case in August 2002,⁵² and a temporary stay of deportation was issued while INS determined its decision on the consent request.

At time of publication, Alfredo was finally being transferred back to Florida in order to go to juvenile court. Although Alfredo's attorneys are hopeful that justice will be served in this tragic case now that Alfredo will finally have the opportunity to present his case on his abuse, abandonment and neglect, seventeen months of detention and disruptive transfers have taken their toll on Alfredo. Despite the recent positive turn of events, Alfredo continues to suffer from a range of trauma-related symptoms, including frequent nightmares about being deported.

⁵⁰ Letter to Christina Kleiser (Alfredo's FIAC attorney) from Wesley Lee, Krome Officer-in-Charge, February 25, 2002.

⁵¹ See e.g., letter to Attorney General John Ashcroft on March 25, 2002 from Amigos Center, Florence Immigrant and Refugee Rights Project, Florida Legal Services, Florida Justice Institute, Immigration and Refugee Services of America, Lutheran Immigration and Refugee Service, Lutheran Children and Family Service of Eastern Pennsylvania, National Immigration Project of the National Lawyers Guild, Northwest Immigrant Rights Project, Pennsylvania Immigration Resource Center, University of Miami School of Law's Children & Youth Law Clinic, University Committee on Human Rights Studies at Harvard University and the Women's Commission for Refugee Women and Children. See also letter to INS Commissioner James Ziglar on July 31, 2002 from same organizations as well as Amnesty International, National Immigrant Rights Representation Association, Lawyers Committee for Civil Rights Under Law of Texas, Center for Gender & Refugee Studies at U.C. Hastings College of the Law, and Legal Services for Children.

⁵² During this discussion, Steven Farquharson, the interim director of the OJA at the time, was particularly helpful and gave thoughtful consideration to Alfredo's case. INS officials acknowledged they had been mistaken in earlier correspondence to FIAC, which erroneously stated that the Federal Court Judge found Alfredo to be a flight risk (the Judge had actually found the opposite). INS also admitted they had mistakenly claimed in written correspondence that Alfredo had only been transferred three times, when he had been transferred on nine separate occasions.